455.

SUPREME COURT OF THE UNITED STATES.

No. 139.

JAMES ERWIN, PLFF. IN ER.,

vs

ALFRED J. LOWRY, CURATOR OF ALEXANDER McNEILL, DEC'D.

IN ERROR TO THE SUPREME COURT FOR THE WESTERN DISTRICT OF LOUISIANA.

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Copy of the writ of error lodged in the clerk's office of the supreme court of Louisiana, western district of Louisiana, in pursuance the statute in such case made and provided, this 19th day of May, 1845.

DUNBAR, HYAMS & ELGEE,
Attorneys for plaintiff in error.

Writ of error.

United States of America, ss:

The President of the United States, to the honorable the judges of the supreme court of the State of Louisiana, and holding session for the western district of Louisiana, at Alexandria, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, between Alfred J. Lowry, curator of Alexander McNeill, deceased, and James Erwin, a manifest error hath happened, to the great damage of the said James Erwin, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the honorable R. B. Taney, chief justice of the said Supreme Court of the United States, this thirteenth of May, in the year of our Lord one thousand eight hundred and forty-five.

[L. S.] DUNCAN N. HENNEN,
Clerk of the United States circuit court and eastern district of Louisiana.

Citation in error.

The United States of America, to Alfred J. Lowry, curator of Alexander McNeill, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, for the western district, at Alexandria, wherein James Erwin plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of

error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable R. B. Taney, chief justice of the Supreme Court of the United States, this thirteenth day of May, in the year of Lord one thousand eight hundred and forty-five.

[L. S.] J. McKINLEY,
Associate justice of the Supreme Court of the U. S.

Marshal's return.

Received June 9th, 1845, and, on the 18th of the same month, I served a copy of this citation on Alfred J. Lowery, personally, at his residence in the parish of Madison, 450 miles from New Orleans; returned 27th June, 1845.

W. P. WAGNER,
D'y U. S. Marshal.

State of Louisiana, ninth judicial district court, parish of Madison:

Pleas before the honorable the ninth judicial district court in and for the parish of Madison.

Be it known and remembered, that on the sixteenth day of August, in the year of our Lord one thousand eight hundred and forty-one, Alfred J. Lowry, curator, &c., by his attornies, filed in this office his petition, in words and figures as follows, to wit:

To the honorable the judge holding sessions of the ninth district court in and for the parish of Madison, State of Louisiana.

The petition of Alfred J. Lowry, residing in said parish of Madison, curator of the succession of Alexander McNeill, deceased, respectfully shews: That, at his decease, the said McNeill was the owner and in possession of the following described property, now situate in said parish of Madison, viz: a certain tract of land situate in the (now) parish of Madison, in the State of Louisiana, on the waters of the Walnut bayou, and being designated as the northeast quarter of section forty-eight, and the northwest quarter of section forty-nine, and the southwest quarter of section forty, and so to cross the Walnut bayou as to give unto one Oliver B. Cobb as much front on the said bayou as practicable, and yet so to run into section forty, bearing north and east, as will make in the whole tract the aggregate amount of six hundred and forty acres, exclusive of sixty acres of cypress swamp. Said land, situate in township seventeen, of range thirteen east, and being the same purchased of John Vertner and wife, by Dawson and Nutt, on the 8th day of August, 1834, and by them sold to said McNeill, by deed dated the 8th January, 1835; that said McNeill was the owner, and in possession of all the buildings, improvements, household and kitchen furniture, farming utensils, stock of horses, mules, cattle, sheep, &c., &c., upon said tract of land, as appertaining thereto; that said tract of land was, at the date aforesaid, and still is, cultivated as a cotton plantation; and that to said

plantation were attached, and upon it were employed, the following named slaves, all which were also the property of said McNeill, and in his possession at his decease, viz: 1 William, 2 Carey, 3 Tom, 4 Nancy, 5 Betts, 6 Scott, 7 Jim, 8 Henry, 9 Simon, 10 Nancy and 12 two children, 13 William and 14 Richard, 15 Chaney, 16 Lucinda, 17 Davy, 18 Isaac, 19 Jack, 20 Minus, 21 Milly, 22 Kitty and 25 three children, 26 Kitta or Ritta, 27 Becky, 28 Harriet, 29 Sam, 30 Edmond, 31 Joe, 32 Little Henry, 33 Mary, 34 Emily, 36 Sally, Young Mary, 40 Young Kitty, 41 Frederick, 42 Lucy, and 44 two children, 45 Young Isaac, 46 Little Sam, 47 Betty, 48 Polly, and 49 Sam, a blacksmith, being forty-four in number.

That all the property herein before described is of the value of one hundred thousand dollars; produces, and for the last three years has produced, an annual nett revenue of twenty-five thousand dollars, and belongs to the succession of the said McNeill, of which your petitioner is curator as aforesaid. That in or about the month of July, A. D. 1840, (and since the death of said McNeill,) one James Erwin, who resides in the city of New Orleans, in this State, illegally, and by fraud and collusion, and without any legal title thereto, took possession of all the above described property, and is still in possession of the same, has appropriated and wrongfully converted to his own use all the fruits and revenues of said property, pretends to be the owner of said property, and refuses to deliver to your petitioner, as curator aforesaid, the possession, use, and enjoyment thereof, although amicably requested so to do, to the damage of said succession in the sum of seventy-five thousand dollars.

Wherefore, the premises considered, your petitioner prays that the said James Erwin may be duly cited to answer this petition; that the succession of said Alexander McNeill, and your petitioner, the legal representative of said succession, may be decreed to be the owner of all the property herein before mentioned and described, its increase, and improvements, and be put into possession thereof; and that said Erwin be adjudged to pay to your petitioner, as curator aforesaid, twenty-five thousand dollars per year, since the year 1840, till possession shall be restored to your petitioner, for the fruits and revenues of said property appropriated to his own use, and for general relief in the premises, &c.

Signed, STACY & SPARROW,
Atty's for pet'r.

(Petition endorsed.) 441, ninth district court, parish of Madison—Alfred J. Lowry, curator, vs. James Erwin; petition filed August 16th, 1841.

E. CAVILEER, *Dep. clerk.*

Citation.

And on the 16th day of August, A. D. 1841, the following citation issued from this office;

The State of Louisiana, ninth judicial district court, parish of Madison:

ALFRED J. LOWRY, Curator, vs. JAMES ERWIN. } No. 441.

To James Erwin, residing in the city of New Orleans, Louisiana:

You are hereby summoned, cited, either to comply with the demand contained in the petition of the said Alfred J. Lowry, curator, of which a copy accompanies this citation, or to deliver your answer to the said petition at the office of the clerk of said court, held in the town of Richmond, in said parish, within fifty days after service hereof.

Witness the honorable B. G. Tenney, judge of said court. Signed, sealed, and delivered, this 16th day of August, 1841.

JOHN T. MASON,
Clerk of said court.
By E. CAVILEER, *Dep. clerk.*

Endorsed. 441, citation to James Erwin.

(*Sheriff's return.*)

Received 3d December, 1841, and on the 4th served copy of the within petition and citation on James Erwin, esq., in person. Ret'd 6th December, 1841.

Signed, A. MURPHY,
Dep. sheriff, P. O.
Signed, V. ALLAIN,
Sheriff of the parish of Orleans.

(Endorsed.) Filed, February 5, 1842.

E. CAVILEER, *Dep. clerk.*

Minutes.

And on Tuesday, May 3d, A. D. 1842, the following judgment was entered on the minutes, page 251:

ALFRED J. LOWRY, vs. JAMES ERWIN. } 441.

In this case the defendant having failed to appear, either in person or by his advocate, after the delay provided by law, judgment by default was rendered against him.

Minutes.

And on Thursday, May 5th, A. D. 1842, the following entry was made on the minutes of the court, page 273:

ALFRED J. LOWRY, vs. JAMES ERWIN. } 441.

Answer and exhibit filed.

Louisiana, 9th judicial district, parish of Madison, ss:

No. 441.

To the honorable the judge of the 9th judicial district of the State of Louisiana, holding sessions in and for the parish of Madison.

The answer of James Erwin, of the city of New Orleans, to the petition of Alfred J. Lowry, curator of the succession of Alexander McNeill, deceased, respectfully shews: That your respondent denies all and singular the allegations in the petition contained, except so far as they are herein after confessed, and requires strict, full, and legal proof thereof; and this respondent, further answering, says, that on the sixth day of July, A. D. 1840, your respondent became the purchaser at public auction, from the marshal of the circuit court of the United States for the 9th circuit of the United States, in and for the eastern district of Louisiana, under a judgment, and on a writ of seizure and sale in the case of Andrew Erwin vs. Hector McNeill, test'y executor of Alexander McNeill, deceased, No. 683 of the docket of the court, of all the property mentioned in the copy of the bill of sale thereof, hereto annexed with the record of the suit aforesaid, for the sum of sixteen thousand dollars cash, and paid the same in cash; which was applied to the payment of a debt due by mortgage by the said succession, as will more fully and clearly appear from a duly certified copy of the record of the said suit hereto annexed, for reference and greater certainty. That after the purchase of said property, and its payment as aforesaid, this respondent received the same from the marshal of said court, and was put in possession thereof in good faith, under the title aforesaid, except of the following part thereof, to wit:

Kitty Dixon and her children, and Little Henry, or Henry Lee, which was never delivered to this respondent by the marshal; and this respondent remained in possession of the same, except of the following slaves, to wit, Kitty Dixon and her children, and Little Henry, or Henry Lee; and this respondent, under said title, went on to greatly improve the land aforesaid, by clearing a large part of it, and placing valuable and permanent improvements thereon to the amount of fifty thousand dollars, which have enhanced its value to the amount of fifty thousand dollars.

This respondent further saith, that the crops made by him on said plantation were of far less value than that stated in the said petition, and were made by great labor and great expense.

This respondent further saith, that the purchase aforesaid is good and valid in law, was made in good faith, and all the proceedings remain in full force. Nor hath any appeal been taken from them, nor any effort been made to reverse, change, or annul the same. And this respondent pleads the said proceedings, of which a certified copy is annexed, as a plea in bar to the suit of the present petition, and says they are binding on him and a bar to his action.

And further answering, this respondent saith, that in case the sale aforesaid is annulled, and the plaintiff should recover the property which

was delivered to this respondent, and which has been transferred from his possession, that the plaintiff must reimburse to this respondent the purchase-money aforesaid, with interest, and also the value of the aforesaid improvements, amounting to the sum of fifty thousand dollars; and this defendant cannot be dispossessed thereof, until the full and entire payment thereof. Wherefore, this respondent prays to be dismissed, with costs; and he prays for all other and further relief which the case may require.

Signed, J. ERWIN.

And all which this respondent hath since sold, and none of the property aforesaid is now in the possession of this respondent.

(Endorsed.) 441, District court, 9th district, parish of Madison—James Erwin vs. Alfred J. Lowry; answer and record filed 5th May, 1842.

Signed, JOHN T. MASON, *Clerk*.

Transcript.

Circuit court of the United States, ninth circuit, in and for the eastern district of Louisiana.

Be it remembered, that on this twenty-third day of May, in the year of our Lord one thousand eight hundred and forty, came into the circuit court of the United States for the eastern district of Louisiana, Andrew Erwin, by Alfred Hennen, his attorney, and filed the following petition, to wit:

To the honorable the judges of the circuit court of the United States for the ninth circuit of Louisiana.

The petition of Andrew Erwin, a citizen of the State of Tennessee, therein residing, respectfully shews: That Hector McNeill, test'y executor of Alexander McNeill, a citizen of the State of Louisiana, residing in the parish of Madison, within the jurisdiction of this honorable court, is justly indebted to your petitioner in the sum of seventeen thousand five hundred dollars, $17,500, besides interest on the promissory notes hereto annexed for reference and greater certainty, drawn on the 8th January, 1835, and payable four years after date, and duly protested when due for want of payment, as will further appear from the protests thereof hereunto annexed for reference; one of which notes was payable to the order of Conway R. Nutt, a citizen of the State of Mississippi, and by him duly endorsed to your petitioner; and the other to Henry S. Dawson, also a citizen of the State of Mississippi, and by him duly endorsed to your petitioner; who avers that the assigners of said notes could have maintained an action in your honorable court on the said notes, against the said Alexander McNeill, previously to the assignment thereof; that on the balance of one of said notes, $7,500, seven thousand five hundred dollars, interest is due at the rate of ten per cent. per annum, from the 11th of January, 1839, until paid; and on the balance of the other $5,000, five thousand dollars, interest is due from the same date, 11th of January, 1839, until paid, and which,

though amicably requested, the said Alexander McNeill, as well as his test'y executor, have neglected to pay.

Your petitioner further shews, that said notes were given in purchase of a plantation situated in the parish of Madison aforesaid, and certain slaves; and for securing the payment thereof, the said plantation and slaves were duly mortgaged, as will further appear from a certified copy thereof, hereto annexed to make part and parcel of this present petition, and to which, for greater certainty, your petitioner refers; and thence your petitioner is entitled to an order of seizure and sale for the payment of the balance aforesaid of $17,500, seventeen thousand five hundred dollars, with the interest from the 11th of January, 1839, of ten per cent. on the sum of seven thousand five hundred dollars, and on ten thousand dollars interest at the rate of five per cent. until paid, and the costs of the protests of said notes, ten dollars and fifty cents, $10 50. Wherefore your petitioner prays that an order of seizure and sale may issue against the said plantation, and the negroes mentioned and described in the act of sale and mortgage aforesaid hereunto annexed, to pay and satisfy said sum of seventeen thousand five hundred dollars, with interest as aforesaid, from the 11th of January, 1839, until paid, with $10 50 costs of protest, and the costs of suit. And your petitioner prays for all such other and further relief as the nature of the case may require, and to equity and justice may appertain; and as in duty bound will ever pray your petitioner. (Seventeen thousand and five hundred dollars, besides interest and costs, claimed.)

Signed, ALFRED HENNEN,
Attorney for pet'r.

And afterwards, to wit, on the 23d of May, 1840, the following deed of Dawson & Nutt to McNeill, was filed in the clerk's office of the circuit court of the United States:

The State of Louisiana, parish of Carroll:

Be it remembered, that on this eighth day of January, in the year of our Lord eighteen hundred and thirty-five, before me, Felix Bosworth, parish judge and ex-officio notary public, in and for the parish of Carroll, came Henry S. Dawson and Conway R. Nutt, of the county of Warren, and State of Mississippi, who acknowledged that, for the consideration, and on the terms hereinafter expressed, they have this day bargained, sold, aliened, conveyed, transferred, confirmed, and delivered, and by these presents do hereby bargain, sell, alien, convey, transfer, confirm, and deliver, unto Alexander McNeill, also of said county and State, and for ever warrant and defend unto him the following described property, viz: a certain tract or body of land, situate in the parish of Carroll, in the State of Louisiana, on the waters of the Walnut bayou, and being designated as the northeast quarter of section forty-eight, and the northwest quarter of section forty-nine, and the southwest quarter of section forty, and so to cross the Walnut bayou as to give unto one Oliver B. Cobb as much front on the said bayou as practicable, and yet so to run into section forty, bearing north and east, as will

was delivered to this respondent, and which has been transferred from his possession, that the plaintiff must reimburse to this respondent the purchase-money aforesaid, with interest, and also the value of the aforesaid improvements, amounting to the sum of fifty thousand dollars; and this defendant cannot be dispossessed thereof, until the full and entire payment thereof. Wherefore, this respondent prays to be dismissed, with costs; and he prays for all other and further relief which the case may require.

Signed, J. ERWIN.

And all which this respondent hath since sold, and none of the property aforesaid is now in the possession of this respondent.

(Endorsed.) 441, District court, 9th district, parish of Madison—James Erwin vs. Alfred J. Lowry; answer and record filed 5th May, 1842.

Signed, JOHN T. MASON, *Clerk*.

Transcript.

Circuit court of the United States, ninth circuit, in and for the eastern district of Louisiana.

Be it remembered, that on this twenty-third day of May, in the year of our Lord one thousand eight hundred and forty, came into the circuit court of the United States for the eastern district of Louisiana, Andrew Erwin, by Alfred Hennen, his attorney, and filed the following petition, to wit:

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though amicably requested, the said Alexander McNeill, as well as his test'y executor, have neglected to pay.

Your petitioner further shews, that said notes were given in purchase of a plantation situated in the parish of Madison aforesaid, and certain slaves; and for securing the payment thereof, the said plantation and slaves were duly mortgaged, as will further appear from a certified copy thereof, hereto annexed to make part and parcel of this present petition, and to which, for greater certainty, your petitioner refers; and thence your petitioner is entitled to an order of seizure and sale for the payment of the balance aforesaid of $17,500, seventeen thousand five hundred dollars, with the interest from the 11th of January, 1839, of ten per cent. on the sum of seven thousand five hundred dollars, and on ten thousand dollars interest at the rate of five per cent. until paid, and the costs of the protests of said notes, ten dollars and fifty cents, $10 50. Wherefore your petitioner prays that an order of seizure and sale may issue against the said plantation, and the negroes mentioned and described in the act of sale and mortgage aforesaid hereunto annexed, to pay and satisfy said sum of seventeen thousand five hundred dollars, with interest as aforesaid, from the 11th of January, 1839, until paid, with $10 50 costs of protest, and the costs of suit. And your petitioner prays for all such other and further relief as the nature of the case may require, and to equity and justice may appertain; and as in duty bound will ever pray your petitioner. (Seventeen thousand and five hundred dollars, besides interest and costs, claimed.)

Signed, ALFRED HENNEN,
Attorney for pet'r.

And afterwards, to wit, on the 23d of May, 1840, the following deed of Dawson & Nutt to McNeill, was filed in the clerk's office of the circuit court of the United States:

The State of Louisiana, parish of Carroll:

Be it remembered, that on this eighth day of January, in the year of our Lord eighteen hundred and thirty-five, before me, Felix Bosworth, parish judge and ex-officio notary public, in and for the parish of Carroll, came Henry S. Dawson and Conway R. Nutt, of the county of Warren, and State of Mississippi, who acknowledged that, for the consideration, and on the terms hereinafter expressed, they have this day bargained, sold, aliened, conveyed, transferred, confirmed, and delivered, and by these presents do hereby bargain, sell, alien, convey, transfer, confirm, and deliver, unto Alexander McNeill, also of said county and State, and for ever warrant and defend unto him the following described property, viz: a certain tract or body of land, situate in the parish of Carroll, in the State of Louisiana, on the waters of the Walnut bayou, and being designated as the northeast quarter of section forty-eight, and the northwest quarter of section forty-nine, and the southwest quarter of section forty, and so to cross the Walnut bayou as to give unto one Oliver B. Cobb as much front on the said bayou as practicable, and yet so to run into section forty, bearing north and east, as will

make in the whole tract the aggregate amount of six hundred and forty acres, exclusive of sixty acres of cypress swamp; said land is situate in township seventeen, of range thirteen east, and being the same as purchased of John D. Verterin and wife, by the said Dawson & Nutt, on the eighth day of August, in the year eighteen hundred and forty-four; also the following slaves, viz: William, aged ten years; Carey, aged fourteen years; Luisa, aged thirty years; Andrew, aged twenty-one years; Claiborne, aged nineteen years; Tom, aged seventeen years; Nancy, aged eighteen years; Scott, aged twenty-four; Old Tom, aged twenty-one years; Jim, aged twenty-four; Henry, aged twenty-two years; Simmeon, aged seventeen years; William, aged seventeen years; Nancy, aged twenty-three years, and two children, William and Richard; Chaney, aged sixteen years; Lucinda, aged eighteen years; Jack, aged twenty-one; Holloway, aged twenty-seven; Minus, aged forty years; Phil, aged nineteen years; Milly, aged twenty-six; Caroline, aged twenty-five, and two children; Kitty, aged twenty-five, and three children; Kitty, aged fifteen years; Becca, aged eighteen years; Harriet, aged eighteen years; Sandy, aged nineteen years; Sam, aged twenty-eight years; Edward, aged twenty-four years; Anthony, aged twenty years; Joe, aged twenty years; Jess, aged eighteen years; Little Henry, aged sixteen years; Mary, aged seventeen years; Eliza, aged sixteen years; Emily, aged sixteen years; Sally, aged sixteen years; Young Mary, aged sixteen years; Young Kitty, aged seventeen years; Frederick, aged twenty years; Lucy, aged twenty-nine, and two children; Young Isaac, aged twenty-eight years; Little Sam, aged eighteen years; Betty, aged seventeen years; Polly, aged seventeen; Sam, aged twenty-two years, a blacksmith.

This sale is made for the sum of one hundred and five thousand dollars, payable in five payments; the four first for the sum of twenty-five thousand dollars each, and the last for the sum of five thousand dollars, by notes of even dates herewith, and payable in the office of the Planter's Bank of the State of Mississippi, at Vicksburg; the said McNeill hereby giving a mortgage on the said land and slaves to secure the four last payments as they respectively fall due.

Thus done and passed, in the parish of Carroll, the day named and year first above written, in presence of Mason Pilcher and Henry T. Daggett, who have hereunto signed, together with the parties, and me the said notary, (and the south west quarter of section forty, (after forty-nine,) interlined and approved, before signing.)

Signed, HENRY S. DAWSON,
C. R. NUTT,
ALEX. McNEILL.

Test—
MASON PILCHER,
HENRY T. DAGGETT.

FELIX BOSWORTH, *Parish judge.*

[Endorsed.] January 15th, 1838; the first, second, third, and fifth,

notes, marked from A to H, inclusive, *has* been paid and exhibited to me this day, which released this mortgage for the amount contained in said notes, being eighty-five thousand dollars.

Signed, FELIX BOSWORTH,
Parish judge.

I certify the foregoing to be a true transcript of the seasure on this mortgage, taken from the records in my office.

Given under my hand and seal of office, this 19th day of May, A. D. 1840.

Signed, FELIX BOSWORTH,
Parish judge.

The State of Louisiana, parish of Carroll.

I, Felix Bosworth, parish judge, in and for the parish of Carroll, do certify, the foregoing to be a true copy of the original deed and mortgage, on file and of record in my office.

Given under my hand and seal of office, this 19th day of May, A. D. 1840. FELIX BOSWORTH,
[SEAL.] *Parish judge.*

And afterwards, on the 23d of May, 1840, the following protest and promissory note, was filed in the clerk's office of the circuit court of the United States:

The State of Mississippi, Warren county:

By this public instrument of protest, be it known, that on this 14th day of October, 1839, at the request of Robert Riddle, esq., cashier, holder of the original note, whereof a true copy is hereon endorsed, I, Wm. Everett, a justice of the peace in and for said county, residing in the city of Vicksburg, by virtue of the powers vested in me by law, went to the office of the Planters' Bank, in said city, and, presenting said note, demanded payment of the same of the teller, and was answered that it would not be paid, as the drawer had deposited no funds for that purpose; whereupon, I, the said justice, by authority vested in me by law, did protest, and, by these presents, do publicly and solemnly protest, as well against the drawer or maker of said note, as against all persons whomsoever, whom it doth or may concern, for all exchange, re-exchange, interest, damages and costs, whatsoever, suffered, or to be suffered, in consequence of the non-payment of said note.

Given under my hand and seal, the day and year first above written.

[SEAL.] Signed, WM. EVERETT,
Justice of the peace.

Note of Alex. McNeill.

$12,500. *Providence, La., January 8th,* 1835.

On the eighth day of January, eighteen hundred and thirty-nine, I promise to pay to Conway R. Nutt, or order, the sum of twelve thousand five hundred dollars, at the office of the Planters' Bank of the State of Mississippi, at Vicksburg; for value received.

Signed, ALEX. McNEILL.

Filed by the clerk of the court, D. N. Hennen, 23d May, 1840.
Ne varietur.

Signed, FELIX BOSWORTH,
Parish judge.

Endorsements on the back of the note.

I have agreed, to make a deduction of twenty-five hundred dollars, in consequence of the land not being as good as it was supposed to be by Alex. McNeill, at the time of purchase, though there is no interest to be allowed.

Signed, C. R. NUTT.
January 11th, 1836.

$2,746. *22d February*, 1839.

Received 11th January, 1839, of Alexander McNeill, esq., the sum of twenty-five hundred dollars, in part payment of this note, and the payment of the balance of this note is postponed till 11th October, 1839, as per agreement of Dr. Nutt in my possession; the balance to be, at an interest of ten per cent. per annum, paid over to Dr. Nutt.

Signed, A. H. ARTHUR.
Teller Planters' Bank, Vicksburg.

Signed, C. R. Nutt, Martin Pleasants & Co.

Endorsements on the back of the protest.

On the within amount, I have agreed to make a deduction of twenty-five hundred dollars, in consideration of the land not being as good as it was supposed to be by Alex. McNeill at the time of purchase, though there is no interest to be allowed.

Signed, C. R. NUTT.
January 11th, 1836.

Received 11th January, 1839, of Alex. McNeill, esq., the sum of twenty-five hundred dollars, in part payment of this note, and the payment of the balance of this note is postponed till 11th, October, 1839, as per agreement of Dr. Nutt in my possession; the balance to be, on an interest of ten per cent. per annum, paid over to Dr. Nutt.

A. H. ARTHUR,
Teller Planters' Bank of Vicksburg.

C. R. Nutt, Martin Pleasants & Co.

And on the 23d of May, 1840, the following promissory note and protest was filed:

Note of McNeill.

$12,500. *Providence, La., Jany. 8th*, 1835.

Four years after date, I promise to pay to the order of Henry S. Dawson, twelve thousand five hundred dollars, for value received, negotiable and payable at office Planters' Bank of Mississippi, at Vicksburg.

Signed, ALEX. McNEILL.

Received on the within note two thousand five hundred dollars, on which no interest is to be allowed for prompt payment.

February the 23d, 1836.—$2,500.

Signed, HENRY S. DAWSON.

Endorsed—

HENRY S. DAWSON,
JOHN TEMPLETON, Jr.,
WM. H. TAYLOR.

A. McNeill's note, $12,500, due Jan. 7, 1839; no interest to be allowed on the credit endorsed 23d February, 1836, it being a credit proper at maturity of note, W. W's. deed of trust.

The State of Mississippi, Warren county, ss:

Probate court, February term, 1840.

William H. Taylor this day presented a note drawn by Alex. McNeill, deceased, and endorsed by Henry S. Dawson and John Templeton, jr., amounting to twelve thousand five hundred dollars, but entitled to a credit of two thousand five hundred dollars, which was sworn to in open court, examined, allowed, and ordered to be certified.

[SEAL.] Signed—Test: H. M. JENKINS, *Clerk*.
By CHAS. BOMZU, *D. C.*

Protest of the above note.

United States of America, State of Mississippi, to wit:

By this public instrument of protest, be it known, that on this date, at the request of Robert Riddle, esq., cashier, and holder of the original note, a true copy of which is hereto annexed, I, Alexander H. Arthur, notary public for the office of the Planters' Bank of the State of Mississippi, at Vicksburg, residing in said city, and duly commissioned and qualified according to law, went to the office of the Planters' Bank, in said city, during banking hours, and, presenting said note, demanded payment thereof from the teller, who refused to pay the same, saying that the drawer had made no deposit of funds for that purpose; whereupon, I, the said notary public, at the request aforesaid, do hereby solemnly and publicly *protest* the said note, as well against the drawer thereof, as against the endorsers, and all persons who are or may be concerned therein, for all exchange, re-exchange, damages and interest, suffered or to suffer, for the non-payment of said note, thus solemnly and publicly protested.

Given under my hand and official seal, at the city of Vicksburg, this 11th day of January, 1839.

[SEAL.] Signed, A. H. ARTHUR,
Notary public.

And afterwards, 23d of May, 1841, the following order of Judge Lawrence, endorsed on petition, was made:

Inasmuch as the mortgage within mentioned imports a confession of judgment, let an order of seizure and sale issue for the sale of the

property mortgaged, if the sum within claimed is not paid after legal notice.

Signed, P. K. LAWRENCE,
New Orleans, 23*d May*, 1840. *U. S. Judge*.

Afterwards, to wit, on the 23d May, 1840, the following writ of seizure and sale was issued:

ANDREW ERWIN
vs.
HECTOR MCNEILL, testamentary exr. of A. McNeill.

United States of America:

The President of the United States, to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to seize and sell, after legal demand, for cash, the following described property, to wit:

A tract of land, situate in the parish of Carroll, (now Madison,) on the waters of the Walnut bayou, and being designated as the northeast quarter of section 48, and the northwest quarter of section 49, and the southwest quarter of section 40, and so to cross the Walnut bayou as to give unto one Oliver B. Cobb, as much front on the said bayou as practicable, and yet so to run into section 40, bearing northeast, as will make in the whole tract the aggregate amount of six hundred and forty acres, exclusive of sixty acres of cypress swamp; said land is situated in township seventeen, of range 13, east; also the following slaves, viz:

William, aged 10 years; Carey, aged 14 years; Levia, aged 30 years; Andrew, aged 21 years; Claiborne, aged 19; Tom, aged 17 years; Nancy, aged 18 years; Scott, aged 24 years; Old Tom, aged 21 years; Jim, aged 24 years; Henry, aged 22 years; Simon, aged 17 years; William, aged 16 years; Nancy, aged 23 years, and 2 children, William and Richard; Chany, aged 16 years; Lucinda, aged 18 years; Davy, aged 27 years; Isaac, aged 35 years; Jack, aged 21 years; Halloway, aged 27 years; Minus, aged 40 years; Phil, aged 19 years; Milly, aged 26 years; Caroline, aged 25 years, and two children; Kitty, aged 25 years, and three children; Betsy, aged 15 years; Becca, aged 18 years; Harriet, aged 18 years; Sandey, aged 19 years; Sam, aged 28 years, Edmond, aged 24 years; Anthony, aged 20 years; Joe, aged 20 years; Jesse, aged 18 years; Little Henry, aged 16 years; Mary, aged 17 years; Eliza, aged 16 years; Emily, aged 16 years; Sally, aged 16 years; Young Mary, aged 16 years; Young Kitty, aged 17 years; Frederick, aged 22 years; Lucy, aged 29 years, and two children; Young Isaac, aged 29 years; Little Sam, aged 18 years; Betty, aged 17; Polly, aged 16 years; and Sam, aged 22 years, a blacksmith. To satisfy Andrew Erwin of the sum of seventeen thousand five hundred dollars, with interest from the 11th of January, 1839, at ten per cent. upon seven thousand five hundred dollars, and interest of five per cent. per annum on ten thou-

sand dollars, and for cost of protest ten dollars and fifty cents, and costs of suit; and what you do in the premises you make return thereof, together with this writ, to our said court, on or before the seventieth day from the date hereof.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-third day of [SEAL.] May, in the year of our Lord one thousand eight hundred and forty, and of the independence of the United States the sixty-fourth year.

Signed, DUNCAN N. HENNEN, *Clerk*.

Marshal's return to the above writ.

Received this order of seizure and sale, on the 25th of May, 1840, and on the 29th of May I delivered the order of court and copy of mortgage, issued by the clerk of this court to the defendant; also a copy of a notice of demand, which notice is herewith returned, (marked A.) On the 1st day of June, I seized the land and 57 slaves, mentioned in this order of seizure and sale, and delivered to said defendant a copy of notice of said seizure, which is also herewith returned, (marked B.) On the 4th day of June, 1840, I affixed copies of an advertisement, (marked C,) and herewith filed, to the door of the court house, the door of the parish judge's office, and at other places, in the parish of Madison, and State of Louisiana, in which the said property is situated, announcing that the said property would be offered for sale on the said premises, to the highest bidder for cash, on Monday, the 6th day of July, 1840, being full 30 days, exclusive of the day on which the advertisements were posted up, viz, the 4th day of June, 1840, and the day of sale. On the said 6th day of July, 1840, I repaired to the premises aforesaid, and after the appraisers, James Brooks and Jesse Couch, duly qualified citizens of Louisiana, selected by the plaintiff and defendant in this case for that purpose, were duly sworn, they proceeded to appraise the said land and 44 of the negroes in this order of seizure and sale, and the same conveyed by deed from the marshal to the purchaser, bearing date the 7th of July, 1840, and of record of this court. Thirteen of the said fifty-seven negroes, which were seized by me, proving to be others than those named in this process, and were not appraised, neither could the said thirteen be found, as reported by the said appraisers in their report, now filed in the court, and marked D. The said land was appraised at $13 per acre; the 640 acres at $13, amount $8,320. The said 44 negroes were appraised separately and in families, and the amount of the whole when added was $15,525, making the aggregate amount for the land and negroes; $23,845 after said appraisement was completed, and between the hours of 12 A. M. & 1 P. M., I offered the said land & forty-four negroes for sale; after making all the declarations required by law, in the relation to the nature and description of the same, and after exhibiting and reading, in an audible voice, a certificate of the recorder of mortgages of the said parish of Madison; and after repeatedly crying the said property, James Erwin, esq., bid the sum of $16,000, which being the highest and last bid, and more than two thirds of the appraisement

thereof, the said land and negroes were adjudged to him, and on the 7th of July, 1840, were conveyed by deed, now of record in this court.

After retaining my fees in this case, viz, $291 25, I settled the balance with Wm. M. Beal, agent for the plaintiff, whose receipt, approved by the counsel for the plaintiff, I now hold for the sum of $15,708 75, to which this debt is entitled to a credit, after deducting the legal fees of the clerk of this court, viz, $19 00, and for recording deed aforesaid, viz, $6 50, as per statement below.

Signed, M. MARIGNY,
U. S. marshal, eastern district of Louisiana,
By ROBERT SLAUGHTER,
His deputy.

William M. Beal's receipt - - -			$15,708 75
Deduct clerk's fees - - - -	$19 00		
Deduct recording deed to Erwin - -	6 50		
		25 50	
		$15,683 25	

This debt is entitled, on 6th of July, 1840, to a credit of $15,683 25.

And afterwards, on the 29th of May, 1840, the following demand was made of Hector McNeill:

Document marked A.

Madison Parish, Louisiana, May 29th, 1840.

Circuit court of the United States, for E. D. of La.

Mr. Hector McNeill, test'y ex'r of Alex'r McNeill:

SIR: Please take notice, that the sum of seventeen thousand five hundred dollars, $17,500, is demanded of you, with interest from the 11th day of January, 1839, till paid, at the rate of ten per cent. per annum on seven thousand five hundred dollars, $7,500, part thereof; and interest from the same date, till paid, at the rate of five per cent. per annum on ten thousand dollars, $10,000, the balance or remainder thereof; ten dollars and fifty cents, $10 50, costs of protest, and costs of suit, claimed of you by A. Erwin, as stated in the petition, (No. 683,) herewith handed you; and that after three days shall have expired from the date of this demand, and in default thereof an order of seizure and sale issues from the court aforesaid, (No. 683,) bearing date on the 23d of May, 1840, and now in my hands, will be loosed on the plantation and negroes in said petition mentioned, to pay and satisfy to the said A. Erwin his aforesaid debt, interest, cost of protest, and costs of suit.

Signed, MANDEVILLE MARIGNY,
U. S. Marshal.

May 29th, 1840. By R. SLAUGHTER, *Dy. Marshal.*

Memo. Delivered to Mr. Hector McNeill, in the parish of Madison, and State of Louisiana, a true copy of the above notice, on this 29th day of May, 1840.

Signed, R. SLAUGHTER.

Document marked B.

And afterwards, to wit, June 1st, 1840, the following notice of seizure was made:

Madison parish, Louisiana, June 1st, 1840.

In the circuit court of the United States, eastern district of Louisiana:

ANDREW ERWIN,
vs.
HECTOR MCNEILL, test'y executor of A. McNeill. } No. 683.

Order of seizure and sale.

To Hector McNeill, test'y executor of Alexander McNeill:

SIR: Take notice that I have seized, and, in three days from the service hereof, shall proceed to advertise and sell, according to law, the property named in the petition, (No. 683,) delivered to you on the 29th day of May, 1840, viz: A tract of land, situate in the parish of Carroll, now Madison, on the waters of the Walnut bayou, and being designated as the northeast quarter of section 48, and northwest quarter of section 49, and the southwest quarter of section 40, and so to cross the Walnut bayou as to give unto one Oliver B. Cobb as much front on the said bayou as practicable, and yet so to run into section 40, bearing northeast, as will make, in the whole tract, the aggregate amount of six hundred and forty acres, exclusive of sixty acres of cypress swamp. Said land is situate in township 17, range 13 east; also the following slaves, to wit:

William, aged 10 years; Carey, aged 14 years; Levia, aged 30 years; Andrew, aged 21; Claiborne, aged 19 years; Tom, aged 17 years; Nancy, aged 18 years; Scott, aged 24 years; Old Tom, aged 21 years; Jim, aged 24 years; Henry, aged 22 years; Simon, aged 17 years; William, aged 17 years; Nancy, and 2 children, William and Richard, aged 23 years; Chaney, aged 16 years; Lucinda, aged 18 years; David, aged 27 years; Isaac, aged 35 years; Jack, aged 21 years; Halloway, aged 27 years; Minis, aged 40 years; Phil, aged 19 years; Milly, aged 26 years; Caroline, and 2 children, aged 25 years; Kitty, aged 25 years, and three children; Betty, aged 15 years; Becca, aged 18 years; Harriet, aged 18 years; Sandy, aged 19 years; Sam, aged 28 years; Edmund, aged 24 years; Anthony, aged 20 years; Joe, aged 20 years; Jesse, aged 18 years; Little Henry, aged 16 years; Mary, aged, 17 years; Eliza, aged 16 years; Emily, aged 16 years; Sally, aged 16 years; Young Mary, aged 16 years; Young Kitty, aged 17 years; Frederic, aged 24 years; Lucy, aged 29 years, and 2 children; Young Isaac, aged 28 years; Little Sam, aged 18 years; Betty, aged 17 years; Polly, aged 16 years; and Sam, aged 22 years, a blacksmith.

To pay and satisfy the writ of seizure and sale, issued in this case, (No. 683,) say the sum of seventeen thousand and five hundred dollars,

with interest and costs, unless the same be paid immediately; the sale to take place on the 6th day of July, 1840, on the premises. Please appoint an appraiser to attend on the day of sale.

Signed, M. MARIGNY, *U. S. Marshal.*
By R. SLAUGHTER, *his Deputy.*

Memo. Delivered to Mr. Hector McNeill, in the parish of Madison, and State of Louisiana, a true copy of the above notice, on the 1st of June, 1840.

Signed, R. SLAUGHTER.
Filed July 18, '40, by D. N. HENNEN, *Clerk.*

And afterwards, to wit, on the 18th of July, 1840, the following appraisement was filed in the clerk's office, and made on the 6th of July, 1840:

Document marked D.

Circuit court of the United States, district east of the State of Louisiana:

ANDREW ERWIN, vs. HECTOR MCNEILL, test'y executor of A. McNeill. } No. 683.

Be it known, that, on this 6th day of July, A. D. 1840, by the agreement of the plaintiff and the defendant in the above entitled suit, the following individuals were selected as appraisers, to wit: James Brook was selected by the plaintiff, and Jesse Couch by the defendant, who, being duly sworn, proceeded to appraise all the property mentioned in the order of seizure and sale, granted in the above entitled suit, to wit: Six hundred and forty acres of land, exclusive of sixty acres of cypress swamp, which we appraise at thirteen dollars per acre, making the amount of eight thousand three hundred and twenty dollars. And the following named negroes, settled and domiciliated on said land, and the same as mentioned in said order of seizure and sale aforesaid, which are appraised as follows: William, $425; Carey, $425; Levia, (not found;) Andrew, (not found;) Claiborne, (not found;) Tom, $375; Nancy Betts, $150; Scott, $550; Old Tom, (not found;) Jim, $300; Henry, $450; Simon, $450; William, (not found;) Nancy, and 2 children, William and Richard, $500; Chaney, $500; Lucinda, $400; Davy, $500; Isaac, $400; Jack, $500; Holloway, (not found;) Minus, $150; Phil, (not found;) Milly, $300; Caroline, and 2 children, (not found;) Kitty, and three children, $500; Ritta, $400; Becky, $400; Harriett, $450; Sandy, (not found;) Sam, $500; Edmond, $500; Anthony, (not found;) Joe, $500; Jess, (not found;) Little Henry, $425, Mary, $475; Eliza, $475; Emily, $475; Sally, $400; Young Mary, $400; Young Kitty, $350; Frederic, $500; Lucy, and 2 children, $300; Young Isaac, $500; Little Sam, $400; Betty, $350; Polly, $300; Sam, $550.

The land and negroes making the aggregate sum of twenty-three thousand eight hundred and forty-five dollars, and being sworn as afore-

said, we, the said appraisers, return the within list and schedule as the true valuation of all the property mentioned in this schedule or inventory shown to us, and as far as it goes, mentioned in the order of seizure and sale as aforesaid.

In testimony whereof, we, the said appraisers, have hereunto subscribed our names, in presence of—

Signed, JAS. BROOKS,
JESSE COUCH,
ROBERT SLAUGHTER, *D. M.*

Sworn to and subscribed before me, this sixth day of July, one thousand eight hundred and forty.

Signed, MANDEVILLE MARIGNY, *U. S. M.*
By ROBERT SLAUGHTER, *Dy. M.*

And afterwards, to wit, on the 4th of June, 1840, the following advertisement was made:

Document marked C.

U. S. marshal's sale.

ANDREW ERWIN,
vs.
HECTOR MCNEILL, test'y executor of Alex. McNeill. } No. 683.

In the circuit court of the United States, eastern district of Louisiana.

Order of seizure and sale.

By virtue of an order of seizure and sale, (No. 683,) to me directed, by the honorable the circuit court of the United States, for the eastern district of Louisiana, I will expose to sale, on Monday, the 6th day of July, 1840, within the hours prescribed by law, on the premises, the following property, viz:

A tract of land, situate in the parish of Carroll, now Madison, on the waters of the Walnut bayou, and being designated as the northeast quarter of section 48, and the northwest quarter of section 49, and the southwest quarter of section 40; and so to cross the Walnut bayou as to give unto one Oliver B. Cobb as much front on the said bayou as practicable, and yet so to run into section 40, bearing north and east, as will make in the whole tract the aggregate amount of eight hundred and forty acres, exclusive of sixty acres of cypress swamp. Said land is situate in township 17, range 13 east. Also the following slaves, viz: William, aged 10 years; Carey, aged 14 years; Levia, aged 30 years; Andrew, aged 21 years; Claiborne, aged 19; Tom, aged 17; Nancy, aged 18 years; Scott, aged 24 years; Old Tom, aged 21 years; Jim, aged 24 years; Henry, aged 22 years; Simon, aged 17 years; William, aged 16 years; Nancy, aged 23 years, and 2 children, William and Richard; Chaney, aged 16 years; Lucinda, aged 18 years; Davy, aged 27 years; Isaac, aged 35 years; Jack, aged 21 years; Halloway, aged 27 years; Minus, aged 40 years; Phil, aged 19 years; Milly, aged 26 years; Caro-

line, aged 25 years, and two children; Kitty, aged 25 years, and three children; Betty, aged 15 years; Becca, aged 18 years; Young Isaac, aged 28 years; Betty, aged 17 years; Harriett, aged 17 years; Sandy, aged 19 years; Sam, aged 28 years; Edmond, aged 24 years; Anthony, aged 20 years; Joe, aged 20 years; Jess, aged 18 years; Little Henry, aged 16 years; Mary, aged 17 years; Eliza, aged 16 years; Emily, aged 16 years; Sally, aged 16 years; Young Mary, aged 16 years; Young Kitty, aged 17 years; Frederic, aged 22 years; Lucy, aged 29 years, and 2 children; Little Sam, aged 18 years; Polly, aged 16 years; and Sam, aged 22 years, a blacksmith. To pay and satisfy to the plaintiff in this case the amount of his debt, interest, and costs.

Signed, M. MARIGNY, *U. S. Marshal*,
By R SLAUGHTER, *his Deputy*.

"Terms of sale cash."

Madison parish, Louisiana, June 4th, 1840.

We, the undersigned, hereby certify, that we saw Robert Slaughter, deputy marshal, post up an advertisement this day, at the court-house door of the said parish of Madison, and one at the door of the parish judge's office, of the said parish, of which said advertisements the one on the opposite side of this page is a true copy.

Signed, THOMAS W. AMMONETT.
J. R. WILSON.

Filed July 18th, 1840. D. N. HENNEN, *Clerk*.

Afterwards, to wit, on the 15th day of July, 1840, the following deed was recorded in the clerk's office of the circuit court of the United States, 9th circuit and eastern district of La., page 41, Record book.

ANDREW ERWIN,
vs.
HECTOR MCNEILL, test'y executor of Alexander McNeill. } No. 683.

State of Louisiana, Madison parish:

Whereas I, Mandeville Marigny, marshal of the United States in and for the eastern district of Louisiana, by virtue of an order, and seizure, and sale, to me directed, by the honorable the circuit court of the United States, ninth circuit, in said district sitting, bearing date the 23d May, 1840, (683 of the docket,) in the name of Andrew Erwin vs. Hector McNeill, test'y ex'r of Alexander McNeill, did seize, according to law, a tract of land and fifty-seven negroes, shewn me as the property described in the said order of seizure and sale, and having given due notice of the said seizure to the said Hector McNeill, test'y ex'r as aforesaid, defendant in said seizure, in the manner pointed out by law, and having advertised the said property for sale after the expiration of the legal delay from the time of giving said notice by advertisements, composed as the law directs, and affixed at the door of the court-house, the door of the parish judge's office, and at other places, in the parish of

Madison and State of Louisiana, in which the said property is situated, announcing that the said property will be sold, on the premises, on Monday, the 6th day of July, 1840, between the hours prescribed by law, being full thirty days exclusive of the day of sale, and the day on which the said advertisements were posted up, viz, the 4th day of June, 1840. And having further complied with all the additional previous requisites and legal formalities, and whereas, on the said 6th day of July, 1840, I repaired to the premises above mentioned, and, between the hours of 12 A. M., and 1 P. M., of that day, the following property was offered for sale to *his* highest bidder, for cash, with the benefit of the appraisement, after having been duly appraised, and the *necessaries* declarations having been previously made in relation to the nature and description of the same, viz: A tract of land, situated in the parish of Carroll, (now Madison,) on the waters of Walnut bayou, and being designated as the northeast quarter of section 48, the northwest quarter of section 49, and the southwest quarter of section 40, and so to cross the Walnut bayou as to give unto one Oliver B. Cobb as much front on the said bayou as practicable, and yet so to run into section 40, bearing northeast, as will make in the whole tract the aggregate amount of six hundred and forty acres, exclusive of sixty acres of cypress swamp. Said land is situated in township 17, of range 13 east; and the following slaves, viz: William, Carey, Tom, Nancy, Betty, Scott, Jim, Henry, Simon, Nancy and two children, William and Richard, Chaney, Lucinda, Harriett, Sam, Edmond, Joe, Little Henry, Mary, Eliza, Emily, Sally, Young Mary, Young Kitty, Frederic, Lucy and two children, Young Isaac, Little Sam, Betty, Polly, and Sam, a blacksmith, being forty-four in number; and the same, so far as they go, mentioned in the aforesaid order of seizure and sale; and having exhibited and read, in an audible voice, a certificate of the recorder of mortgages, of the parish of Madison, a copy of which is annexed to this transfer, I proceeded to cry the aforesaid land and negroes to go then at the request of the defendant; and whereas James Erwin, esq., bid the sum of sixteen thousand dollars, being the highest and last bid, and more than the two-thirds of the appraised value of the whole land and negroes aforesaid, was adjudged to him. Now, therefore, know all men by these presents, that I, the said marshal, do, in consideration of the premises and by virtue of the statutes in such cases made and provided, grant, bargain, sell, assign, transfer, and set over, to the said James Erwin, his heirs and assigns, the aforesaid tract or parcel of land, being the same bought of Vertner, by Henry S. Dawson and Conway R. Nutt, and by them sold to Alexander McNeill, to which deed special reference is made, and the above mentioned slaves, all right, title, and interest, which the said Alexander acquired, both to said land and slaves, as per act passed before Felix Bosworth, parish judge and ex-officio notary public, in and for the parish of Carroll, on the 8th of January, 1835, to hold the same to the said James Erwin, his heirs or assigns, forever. The said James Erwin, being present, accepts this conveyance.

In witness whereof I have hereunto set my hand and seal, in the

parish of Madison and State of Louisiana, and in the said eastern district of Louisiana, this 7th day of July, 1840, and in the sixty-fifth year of the independence of the United States, in presence of Agnus McNeill, Leander A. Erwin, Thos. Amonett, residing in the State of Louisiana, who have signed this act with the parties.

Signed, MANDEVILLE MARIGNY,
U. S. Marshal.
By ROBT. SLAUGHTER,
Dep'y U. S. M.

Witnesses—
ANGUS MCNEILL,
L. A. ERWIN,
T. W. AMONETT.

Accepted. Signed, J. ERWIN. [SEAL.]

Certificate of mortgage annexed.

State of Louisiana, parish of Madison:

I, R'd Charles Downes, parish judge, and ex officio recorder of mortgages for said parish, do hereby certify, that there does not exist, of record of my office, any mortgage, lien, or encumbrance, whatsoever, standing in the name of Alexander McNeill, and recorded against the following described property, viz: a tract of land situated in the parish of Carroll, (now Madison,) on the waters of the Walnut bayou, and being designated as the northeast quarter of section 48, and the northwest quarter of section 49, and the southwest quarter of section 40, and so to cross the Walnut bayou as to give unto one Oliver B. Cobb as much front on the said bayou as practicable, and yet so to run into section 40, bearing northeast, as will make, in the whole tract, the aggregate amount of six hundred and forty acres, exclusive of sixty acres of cypress swamp; said land is situate in township 17, range 13, east. Also the following slaves, viz: William, aged 10 years; Carey, aged 14 years; Levia, aged 30 years; Andrew, aged 21 years; Claiborne, aged 19 years; Tom, aged 17 years; Nancy, aged 18 years; Scott, aged 24 years; Old Tom, aged 21 years; Jim, aged 24 years; Henry, aged 22 years; Simon, aged 17 years; William, aged 16 years; Nancy, and two children, William and Richard, aged 23 years; Chaney, aged 16 years; Lucinda, aged 18 years; Davy, aged 27 years; Isaac, aged 35 years; Jack, aged 21 years; Holloway, aged 27 years; Minus, aged 40 years; Phil, aged 19 years; Milly, aged 26 years; Caroline, and 2 children, aged 25; Kitty, aged 25 years, and three children; Betty, aged 15 years; Becca, aged 18 years; Harriett, aged 18 years; Sandy, aged 19 years; Sam, aged 28 years; Edmond, aged 24 years; Anthony, aged 20 years; Joe, aged 20 years; Jess, aged 18 years; Little Henry, aged 16 years; Mary, aged 17 years; Eliza, aged 16 years; Sally, aged 16 years; Young Mary, aged 16 years; Young Kitty, aged 17 years; Frederic, aged 22 years; Lucy, aged 29 years, and 2 children; Young Isaac, aged 28 years; Little Sam, aged 18 years; Betty, aged 17 years; Polly, aged 16 years; and Sam, a blacksmith, aged 22.

Witness my signature and the impress of my official seal, this fourth day of July, A. D. eighteen hundred and forty.

Signed, RICHARD C. DOWNES,
Parish Judge.

Clerk's office of the circuit court of the United States, 9th circuit, eastern district of Louisiana:

I, Duncan N. Hennen, clerk of the circuit court of the U. S., 9th circuit, east district of Louisiana, do hereby certify, that the foregoing 24 pages contain a true and faithful transcript of the record of the suit of Andrew Erwin vs. Hector McNeill, testamentary executor of Alexander McNeill, No. 683, of the docket of the circuit court of U. S., 9th circuit, east district of Louisiana, so fully as the same remained on file on the 18th day of July, 1840.

In witness whereof, I have hereunto set my hand and the seal of the said court, this 13th day of December, 1841, at the city of New Orleans. Signed,

[SEAL.] DUNCAN N. HENNEN, *Clerk.*

Judge's certificate.

I, Th. H. McCaleb, judge of the district court of the United States for the eastern district of Louisiana, and one of the judges of the circuit court of the United States for the eastern district of Louisiana, do hereby certify, that Duncan N. Hennen is the clerk of the circuit court of the United States, 9th circuit, eastern district of Louisiana, and that due faith and credit are due to his acts as such.

Witness my hand and seal, this 13th day of December, 1841.

[SEAL.] Signed, THEO. H. McCALEB.

(Transcript endorsed.) 441, circuit court U. S., 9th circuit, eastern district of Louisiana, No. 683. Andrew Erwin vs. Hector McNeill, testamentary executor of Alexander McNeill, No. 3. Transcript, $20.

Filed 5th May, 1842.

JOHN T. MASON, *Clerk.*

Subpœna.

And on the 9th day of May, 1842, the following subpœna issued from this office:

The State of Louisiana,
parish of Madison, district court:

To the sheriff of the said parish, greeting:

You are hereby commanded to summon Thomas W. Amonett, to be and appear in the district court, held at the court house in the town of Richmond, in the parish aforesaid, on Friday, 13th instant, then and there to testify, and the truth to say, in a certain matter of controversy now pending in said court, between Alfred J. Lowry, curator, &c.,

plaintiff, and James Erwin, defendant, on the part of the plaintiff, and not thence depart until legally discharged. Herein fail not.

Witness the honorable Thomas Curry, judge of said court, this 9th [SEAL.] day of May, A. D. 1842.

Signed, J. W. COUCH,
Dep'y clerk of said court.

(Sheriff's return.) Received May the 9th, 1842, and served the same day of the month and year, by handing a certified copy of this subpœna, in person, to Ths. W. Amonett, at his residence.

Parish of Madison, May 11th, 1842.

Signed, TH. B. SCOTT, *Sheriff.*
By L. H. BRYAN, *Dep'y Sh'ff.*

Service, $0.75. Mileage, 1.00. Endorsed, 441. Alfred J. Lowry vs. James Erwin. Supbœna filed 11th May, 1842.

JOHN T. MASON, *Clerk.*

Subpœna.

And on the 14th day of May, A. D. 1842, the following subpœna was issued from this office:

The State of Louisiana,
parish of Madison, ninth district court:

To the sheriff of the said parish, greeting:

You are hereby commanded to summon Thomas W. Amonett and B. F. Amonett, to be and appear in the district court, held at the court house in the town of Richmond, in the parish aforesaid, forthwith, then and there to testify, and the truth to say, in a certain matter of controversy now pending in said court, between Alfred J. Lowry, curator, &c., plaintiff, and James Erwin, defendant, on the part of the defendant, and not thence depart until legally discharged. Herein fail not.

Witness the honorable Thomas Curry, judge of said court, this 14th [SEAL.] day of May, A. D. 1842.

Signed, J. W. COUCH,
Dep'y clerk of said court.

Sheriff's return. Received on the 14th day of May, 1842, and served on the same day, by handing a summons to each of the within named witnesses.

Parish of Madison, La., May 14th, A. D. 1842.

Signed, G. W. TARKINGTON,
Service 1.25. *Dep'y Sh'ff.*

Endorsed, 441. Filed 14th May, 1842.

Signed, JOHN T. MASON, *Clerk.*

And on Monday, May 9th, A. D. 1842, the following entry was made on the minutes of the court, page 287:

ALFRED J. LOWRY, vs. JAMES ERWIN. } 441.

Set for Friday, 13th inst.

Minutes.

And on Tuesday, November 22d, A. D. 1842, the following entry was made on the minutes of the court, page 346.

ALFRED J. LOWRY, curator, &c. vs. JAMES ERWIN. } 441.

Set for Friday, 25th inst.

Subpœna.

And afterwards, to wit, on the 23d day of November, A. D. 1842, the following subpœna issued from this office:

The State of Louisiana,
parish of Madison, district court:

To the sheriff of the said parish, greeting:

You are hereby commanded to summon Thomas W. Amonett and Benjamin F. Amonett, to be and appear in the district court, held at the court house in the town of Richmond, in the parish aforesaid, on Friday, 24th inst., then and there to testify, and the truth to say, in a certain matter of controversy now pending in said court, between Alfred J. Lowry, curator, plaintiff, and James Erwin, defendant, on the part of the plaintiff, and not thence depart until legally discharged. Herein fail not.

Witness the honorable Thomas Curry, judge of said court, this 23d
[SEAL.] day of November, A. D. 1842.

Signed, J. W. COUCH,
Dep'y clerk of said court.

Sheriff's return.

Received on the 24th of November, 1842, and served, in person, on Thomas W. Amonett, on the same day and year, at his domicil, on Walnut bayou, in the parish of Madison, La.

To service, 62½. To mileage, $1.12½.

Served on Benjamin F. Amonett, by leaving a copy of this subpœna, with a free white person over the age of fourteen years, at his domicil, on Walnut bayou, in the parish of Madison, La.

To service, 62½. To mileage, $1.12½.

Signed, R. J. BRASHER, *Dep'y Sh'ff.*

Endorsed, No. 441, Madison district court. Subpœna to the high sheriff. Filed Nov. 25th, 1842.

Signed, J. W. COUCH, *D'y clerk.*

Subpœna.

And afterwards, to wit, on the 28th of November, A. D. 1842, the following subpœna issued from this office:

The State of Louisiana,
parish of Madison, ninth district court, 441.

To the sheriff of the said parish, greeting:

You are hereby commanded to summon James Brooks, to be and appear in the district court, held at the court house in the town of Richmond, in the parish aforesaid, on the 28th of November inst., then and there to testify, and the truth to say, in a certain matter of controversy now pending in said court, between A. J. Lowry, curator, plaintiff, and James Erwin, defendant, on the part of the plaintiff, and not thence depart until legally discharged. Herein fail not.

Witness the honorable Thomas Curry, judge of said court, this 28th day of November, A. D. 1842.

Signed, JOHN T. MASON,
Clerk of said court.

Sheriff's return.

Received on the 28th of November, 1840, and served subpœna on James Brooks, in person, on same day.

Service, 62½. Signed, THO. B. SCOTT, *Sh'ff*.

Endorsed, 441. A. J. Lowry vs. James Erwin. Subpœna to the sheriff, filed November 29th, 1842.

Signed, J. W. COUCH, *Dep'y clerk*.

Evidence.

ALFRED J. LOWRY, curator,
vs.
JAMES ERWIN. } 441.

Plaintiff offers letters of curatorship of A. J. Lowry, received without objection, and marked A.

Offer act of sale from Dawson and Nutt to Alexander McNeill, received without objection, and marked B.

Petition of Hector McNeill, testamentary executor, offered and received, and marked C.

Certified copy of inventory, offered and received, and marked D.

James Brooks, sworn for plaintiff, says: He lived three years and six or eight months, as overseer, upon the plantation of Alexander McNeill, in this parish, called the Orkney place. Says it is the same plantation that James Erwin took possesson of in the summer of 1840. Says Dawson and Nutt were in possession of the place before McNeill *had* on it; at the time Erwin took possession of the place there was about 80 or 90 slaves on the place; at the time of McNeill's death witness thinks there was between six and seven hundred acres of land in cultivation. Witness says he commenced overseering on the place in 1835, and quit about the middle of July or August, 1839. Knew the negroes well. Says he knew part of the Dawson and Nutt negroes. Witness knew the slaves William and Cary, Andrew, Tom, Nancy, Scott, Jim,

Henry. Witness says there was two Henrys on the place. One Henry Lee was taken to Warren county plantation. Witness knew Simon, Nancy, Chaney, Lucinda, *Davy Good*, Isaac, Jack, Minus, Milly, two named Kitty, and one of them had two children; one of the *Kittys* was carried over to Warren county; *Ritty*; Becky, Harriett, two Sams, blacksmith Sam, and another named Sam, Edmond, Joe, Little Henry, Mary, Eliza, Emily, Sally, Young Mary, Young Kitty, Frederic, Lucy, Betty, Polly; the aforesaid negroes, witness says were on the place when he left, except Henry Lee and Kitty Dickson.

Cross-examined.

Witness says he was one of the appraisers at a marshal's sale, that took place on the Orkney plantation in the summer of 1840. Says the negroes that were appraised were presented to him, except Kitty, Dickson, and Henry Lee. Says he has seen the place but once since he left, and he knows of about forty acres having been cleared since he left.

Examined in chief.

Witness says the appraisement commenced in the morning, and was finished before dinner; thinks James Erwin was present. Says that Slaughter was acting as deputy marshal.

Charles B. McKiernan, sworn for plaintiff, says that the average price of fine cotton for the crop of 1840 was, in winter of 1840 and 1841, about ten and ten and a half cents; and that the crop of 1841 sold at an average price; witness believes, in the winter of 1841 and 1842, was eight and eight and a half cents; that the crop of 1842, the present year, averages about six cents.

Cross-examined.

Witness says he knew several crops that were sold, late in the winter of 1840 and 1841, at ten and ten and a half.

Thomas B. Scott, sworn for plaintiff, says he thinks the average price of the crop of 1841 was seven and a half cents, and this year about six cents.

Thomas W. Amonett, sworn for plaintiff, says he has been the overseer on the Orkney plantation since the 8th of December, 1839; says he was overseering for Hector McNeill until the 6th of July, 1840; and since that time he has been overseering for James Erwin, on the same place, until the 7th of March last; says, in the year 1840, *says* there *was* five hundred and forty-eight bags of cotton made on the place, making six hundred and twenty-five bales, at four hundred pounds to the bale; in the year 1841, there *was* four hundred and eighty-eight bales, at four hundred pounds each; says he thinks there will not be over three hundred and fifty bales the present year, of four hundred pounds each.

Cross-examined.

Witness says he was present, in the year 1840, when James Erwin purchased the Orkney place; says there *was* many more hands engaged

in making the crop 1840 than there *was* when Mr. Erwin purchased the place, on the 6th of July, 1840; says Erwin purchased with the place about forty-six negroes—about forty hands; says there *was* thirty-two or three hands more engaged in the cultivation of the crop of 1840 than was purchased by Mr. Erwin at the sale; says there *was* about thirty-five hands more engaged in cultivating the place in the year 1841 than *was* purchased at the sale; has now about forty hands more than Erwin purchased at the sale; says the expense of the place in 1840 was not less than five thousand dollars; in 1841, about the same, or a little more, says about six thousand dollars, and the present year about four thousand dollars; that, since the sale of 1840, about two hundred acres of land *has* been cleared on the Orkney place; about ninety of those acres *is* included in the land purchased by Erwin on the sixth of July, 1840. Since the sale, nine negro houses, four cisterns, two corn cribs, stable, and corn mill, have been built on the Nutt and Dawson place since the sale. Witness thinks the buildings and cisterns named are worth about twenty-eight hundred dollars; that it is worth about thirty-five and forty dollars per acre to clear the ninety acres which has been spoken of as having been cleared in the manner in which it is done.

James Brooks, again called by plaintiff, says he thinks about four hundred acres of land *was* cleared on the Dawson and Nutt place when James Erwin took possession; says Alex'r McNeill lived in Warren county, near Warrenton, Mississippi, until his death; that Hector McNeill lived in the upper part of Mississippi until after his brother's death, when he moved down to his brother's place, in Warren county, Mississippi.

Thomas W. Amonett, witness again called by plaintiff, says four of the negro cabins spoken of were built in the year 1840, after Erwin took possession; the two corn cribs were also built in 1840, after Erwin took possession; the cisterns were built in July and August, 1841; says it is about four hundred and twenty-five miles from the parish of Madison to New Orleans.

Cross-examined.

Witness says there *was* six hundred acres of land in cultivation on the Orkney plantation in 1840, and of that four hundred acres belonged to the Dawson and Nutt place; says there *was* about seventy-five hands engaged in the cultivation of the place in 1840; and out of that number there *was* thirty-two hands that *was* not included in the purchase in July, 1840; says, in 1841, there *was* forty hands more than *was* included in the purchase of July, 1840. There *was* six hundred and sixty acres in cotton in 1841, four hundred of which was in the Nutt and Dawson claim. Witness says there *is* seven hundred acres in cultivation this year, 1842, four hundred and twenty or thirty acres of which is included in the Dawson and Nutt place; and that there *is* forty-five hands more than *was* included in the purchase of July, 1840, engaged in the cultivation of the place this year.

Benjamin F. Amonett, sworn for plaintiff, says the foregoing testimony of Thomas Amonett is correct, so far as witness knows.

Hugh W. Dunlap, sworn on part of plaintiff, says the distance from New Orleans to the court-house, in the parish of Madison, is about four hundred and thirty or forty miles; says he was acquainted with Alexander and Hector McNeill; says they were citizens of the State of Mississippi, and knew them as such since 1833; that Alexander McNeill was a citizen of Mississippi until the day of his death, and that Hector McNeill is still a citizen of Mississippi.

Plaintiff closes his testimony.

Defendants offer the copy of *will*, marked No. 1; offer copy of Hector McNeill's declaration of domicil, marked No. 2; offer transcript from the circuit court, U. S., marked No. 3; offer copy of *will*, as recorded in parish judge's office in Madison, La., marked No. 4.

Thomas W. Amonett again called by plaintiff. Says Hector McNeill is a married man, and lived in Mississippi in 1840; part of the time in Vicksburg, and part of his time near Warrenton, on the Magnolia place; never knew him to reside in this parish in December, 1839. Hector McNeill and family made their home in Vicksburg, and boarded in the Verandah Hotel. Admitted that all the property is in this parish.

Defendants also offer conveyance of marshal, marked No. 5; offer petition of Hector McNeill for injunction against the Exchange and Banking Company, No. 303, filed 16th July, 1840, to show that Hector McNeill styled himself a citizen of the parish of Madison, La.; a copy of petition to be furnished, and No. 6.

Clerk's certificate.

State of Louisiana, parish of Madison, ninth district court:

I, John T. Mason, do hereby certify the foregoing to be all the evidence received, and documents offered and received, in this suit.

Witness my signature and impress of the seal of the ninth district court, this 1st day of December, A. D. 1842.

(Signed) JOHN T. MASON,
Clerk 9th district court.

Minutes.

And on Wednesday, November 30th, A. D. 1842, the following order was entered on the minutes of the court, page 381:

ALFRED J. LOWRY, curator,
vs.
JAMES ERWIN. } 441.

On motion of plaintiff's counsel, it is ordered by the court, that an attachment issue for witnesses Thomas W. and Benjamin F. Amonett, who were summoned for plaintiff. The case was then commenced; and, not being finished, the court adjourned.

Letters of curatorship, succession of Alexander McNeill, marked A.

State of Louisiana, parish of Madison, court of probates:

Whereas, by an order of said court, dated the 23d day of March, A. D. 1841, Alfred J. Lowry was appointed curator of the vacant succession of Alexander McNeill; and the said Alfred J. Lowry has taken the oath prescribed by law, and has furnished bond and security to the satisfaction of the judge of said court. Now, therefore, be it known by these letters of curatorship, that the said Alfred J. Lowry is fully authorized and empowered to do and perform all and singular the acts and duties incident to said appointment.

Witness the signature of the judge, and seal of said court, this [SEAL.] 24th day of April, A. D. 1841.

(Signed) RICHARD CHAS. DOWNES,
Parish Judge.

A true copy hereof was delivered this 24th day of April, 1841.

Attest:

(Signed) RICHARD CHAS. DOWNES,
Parish Judge.

State of Louisiana, parish of Madison:

I certify, that the foregoing is a true copy of the original letters of curatorship on file and of record in my office.

Witness my signature and the impress of my seal of office, this [SEAL.] 9th day of May, A. D. 1842.

(Signed) R. C. DOWNES, *Parish Judge.*

(Endorsed.) 441, A. Letters of curatorship, succession of Alexander McNeill. Filed 30th November, 1842.

(Signed) JOHN T. MASON, *Clerk.*

Conveyance marked B.

State of Louisiana, parish of Madison:

Be it remembered that, on this eighth day of January, in the year of our Lord eighteen hundred and thirty-five, before me, Felix Bosworth, parish judge and ex-officio notary public in and for the parish of Carroll, came Henry S. Dawson and Conway R. Nutt, of the county of Warren, and the State of Mississippi, who acknowledged that, for the consideration and on the terms hereinafter expressed, they have this day bargained, sold, aliened, conveyed, transferred, confirmed, and delivered, and by these presents do hereby bargain, sell, alien, convey, transfer, confirm, and deliver, unto Alexander McNeill, also of said county and State, and forever warrant and defend unto him the following described property, viz: A certain tract or body of land, situate in the parish of Carroll, in the State of Louisiana, on the waters of the Walnut bayou, and being designated as the northeast quarter of section forty-eight, and the northwest quarter of section forty-nine, and the southwest quarter of section forty, and so to cross to Walnut bayou as to give unto one Oliver B. Cobb as much front on the said bayou as practicable, and yet so to run into section forty, bearing north and east

as will make in the whole tract the aggregate amount of six hundred and forty acres, exclusive of sixty acres of cypress swamp. Said land is situate in township seventeen, of range thirteen, east, and being the same as purchased of John D. Vertner and wife by the said Dawson and Nutt, on the eighth day of August, in the year eighteen hundred and thirty-four. Also the following slaves, viz:

William, aged ten years; Carey, aged fourteen years; Silvia, aged thirty years; Andrew, aged twenty-one years; Claiborne, aged nineteen years; Tom, aged seventeen years; Nancy, aged eighteen years; Scott, aged twenty-four years; Old Tom, aged twenty-one years; Jim, aged twenty-four years; Henry, aged twenty-two years; Simeon, aged seventeen years; William, aged sixteen years; Nancy, aged twenty-three years, and two children, William and Richard; Chaney, aged sixteen years; Lucinda, aged eighteen years; Davy, aged twenty-seven years; Isaac, aged thirty-five years; Jack, aged twenty-one years; Holloway, aged twenty-seven years; Minus, aged forty years; Phil, aged nineteen years; Milly, aged twenty-six years; Caroline, aged twenty-five years, and two children; Kitty, aged twenty-five years, and three children; Ritty, aged fifteen years; Becca, aged eighteen years; Harriet, aged eighteen years; Sandy, aged nineteen years; Sam, aged twenty-eight years; Edmund, aged twenty-four years; Anthony, aged twenty years; Joe, aged twenty years; Jess, aged eighteen years; Little Henry, aged sixteen years; Mary, aged seventeen years; Eliza, aged sixteen years; Emily, aged sixteen years; Sally, aged sixteen years; Young Mary, aged sixteen; Young Kitty, aged seventeen years; Frederic, aged twenty-two years; Lucy, aged twenty-nine, and two children; Young Isaac, aged twenty-eight years; Little Sam, aged eighteen years; Betty, aged seventeen years; Polly, aged sixteen years; Sam, aged thirty-two years, a *blacksmith*.

This sale made for the sum of one hundred and five thousand dollars, payable in five annual payments; the four first for the sum of twenty-five thousand dollars each, and the last for the sum of five thousand dollars, by notes of even dates herewith, and payable in the office of the Planter's Bank of the State of Mississippi, at Vicksburg; the said McNeill hereby giving a mortgage on the said land and slaves to secure the four last payments, as they respectively fall due. Thus done and passed, in the parish of Carroll, the day, month, and year first above written, in presence of Mason Pilcher and Henry S. Daggett, who have hereunto signed, together with the parties, and me, the said notary.

The original is signed—

HENRY S. DAWSON, [SEAL.]
C. R. NUTT,

Accepted, ALEX. McNEILL,
MASON PILCHER,
HENRY S. DAGGETT,
FELIX BOSWORTH,
Parish Judge.

State of Louisiana, parish of Madison:

I certify, that the foregoing is a true copy of the original act on file in my office, and record in book A, of conventional mortgages, pages 117 and 118, on the 24th day of July, A. D. 1840.

Witness my signature, and the impress of my official seal, this [SEAL.] 9th day of May, A. D. 1842.

(Signed) R. C. DOWNES, *Parish Judge*.

(Endorsed.) B. Dawson and Nutt, conveyance to Alexander McNeill. No. 441. Copy filed 30th day November, 1842.

(Signed) JOHN T. MASON, *Clerk*.

Document marked C.

JUNE 6th, 1839.

State of Louisiana, Madison parish:

To the honorable Richard Charles Downes, judge of the parish of Madison aforesaid, now acting as probate judge of said parish:

The petition of your petitioner, Hector McNeill, a citizen of Coahoma county, in the State of Mississippi, sheweth unto your honor that, on the 28th day of May, 1839, Alexander McNeill, late a citizen of Warren county, Mississippi, departed this life, leaving a last will and testament, a copy of which is marked exhibit A, and prayed to be taken as a part of this petition. Your petitioner further sheweth unto your honor that, by said will, your petitioner was left the sole executor and principal legatee of the said Alexander McNeill. Your petitioner further sheweth, that said Alexander McNeill died seized and possessed of two large farms, in the parish and State aforesaid, on which there are a large number of negroes, horses, mules, and cattle. Your petitioner further sheweth, that he is the brother of said Alexander McNeill, deceased. Your petitioner further sheweth, that, by the laws of the State of Mississippi, he is bound, as executor of his deceased brother's will, to present the same for probate, at the next term of the probate court for Warren county, Mississippi, which court does not sit until the fourth Monday in this month, by virtue of the laws of the State of Mississippi. Your petitioner is deprived of the *privilege* of having said last will and testament of his deceased brother proven and recorded at this time, so that he cannot present a copy of the same, properly certified, to your honor, to be recorded in the probate clerk's office, (or in whatever office the laws of this State require it should be recorded in.)

Your petitioner, being desirous of taking on himself the succession of his deceased brother's estate, according to the terms of his last will and testament, and the laws of this State, he therefore prays that your honor will take an inventory of all the property, in the parish aforesaid, belonging to the estate of the said Alexander McNeill, deceased, and grant to your petitioner the succession of his deceased brother, Alexander McNeill's estate, according to the terms of his last will and testament, and the laws of this State; and to grant any other

and whatever order may be necessary, by the laws of this State, to entitle your petitioner to the possession and succession of his deceased brother's property in the parish aforesaid; and, as in duty bound, he will ever pray, &c.

HECTOR McNEILL.

Filed June 6th, 1839.

A true copy of the original petition on file in my office, November 28th, 1842.

Attest: R. C. DOWNES, *Parish Judge*.

(Endorsed.)—Succession of A. McNeill. Copy of petition, 441, C. Filed 30th Nov'r, 1842.

Signed, JOHN T. MASON, *Clerk*.

Copy of inventory, marked D.—Inventory.

State of Louisiana, parish of Madison:

Be it remembered, that on the second day of July, A. D. eighteen hundred and thirty-nine, I, Richard Charles Downes, parish judge and ex officio notary public, in and for the said State and parish, at the request of Hector McNeill, executor of the last will of Alexander McNeill, deceased, assisted by Thomas Asknew and Robert M. Scott, freeholders, residing in this parish, duly appointed and sworn appraisers, and James Marsh Downes, attorney-at-law, duly appointed counsel for the absent heirs of said deceased, at the plantations situate on the Walnut bayou, in this parish, known and called the Orkney and Dalkeith plantation, did, in the presence of the witnesses hereinafter named and undersigned, proceed to take inventory and make appraisement of all the property belonging to the succession of said deceased, situate in this parish, and which was shown us, or of which we otherwise obtained information, as follows, viz:

The lands, being the said Orkney and Dalkeith plantations, lying in a body on both sides of the Walnut bayou, and consisting of three thousand and eight acres, appraised at fifty dollars an acre - - - -	$154,000
The negroes on the Orkney plantation, being slaves for life, of the names, ages, and appraisement as follows, viz:	
Minus, aged 40 years, appraised at four hundred dols. - - -	400
Isaac Barnes, aged 40 years, app'd at eight hundred dols. - - -	800
Vincent, aged 40 years, app'd at eight hundred dols. - - - -	800
Edmond, aged 38 years, app'd at six hundred dols. - - - -	600
Sam Cook, aged 37 years, app'd at seven hundred dols. - - -	700
Davy Betts, aged 33 years, app'd at seven hundred and fifty dols. - -	750
Sam Carr, aged 32 years, app'd at six hundred and fifty dols. - -	650
Isaac Carter, aged 31 years, app'd at seven hundred dols. - - -	700
Scott, aged 28 years, app'd at eight hundred and fifty dols. - - -	850
Davy Good, aged 28 years, app'd at seven hundred and fifty dols. - -	750
Ned, aged 27 years, app'd at seven hundred and fifty dols. - - -	750
Tom, aged 27 years, app'd at eight hundred dols. - - - -	800
Bob, aged 26 years, app'd at seven hundred dols. - - - -	700
George Betts, aged 25 years, app'd at eight hundred dols. - - -	800
Mack, aged 25 years, app'd at seven hundred and fifty dols. - - -	750

Inventory—Continued.

Jack, aged 24 years, app'd at eight hundred dols.	$800
Lovelace, aged 24 years, app'd at five hundred dols.	500
John Shepherd, aged 24 years, app'd at seven hundred and fifty dols.	750
Joe, aged 24 years, app'd at seven hundred dols.	700
Frederick, aged 23 years, app'd at eight hundred dols.	800
Sam Johnson, aged 23 years, app'd at seven hundred and fifty dols.	750
Henry Venable, aged 23 years, app'd at eight hundred dols.	800
George Moore, aged 22 years, app'd at two hundred dols.	200
Henry Franklin, aged 22 years, app'd at six hundred and fifty dols.	650
Jerry, aged 19 years, app'd at six hundred and fifty dols.	600
Simon, aged 19 years, app'd at six hundred and fifty dols.	650
Edward, aged 18 years, app'd at six hundred dols.	600
Lewis, aged 17 years, app'd at five hundred and fifty dols.	550
Adam, aged 17 years, app'd at five hundred and fifty dols.	550
Carey, aged 17 years, app'd at five hundred and fifty dols.	550
William, aged 16 years, app'd at five hundred and fifty dols.	550
Orange, aged 15 years, app'd at four hundred dols.	400
Jim, aged 14 years, app'd at five hundred dols.	500
John Green, aged 2 years, app'd at four hundred dols.	400
Willis, aged 13 years, at four hundred dols.	400
Arthur, aged 8 years, app'd at three hundred dols.	300
Lucy, aged 41 years, app'd at three hundred dols.	300
Harriet Knight, aged 39 years, app'd at four hundred dols.	400
Locky, aged 36 years, app'd at five hundred dols.	500
Wealthy, aged 39 years, app'd at four hundred dols.	400
Milly, aged 31 years, app'd at five hundred and fifty dols.	550
Martha Clifton, aged 31 years, app'd at five hundred dols.	500
Nancy Betts, aged 29 years, app'd at three hundred dols.	300
Kitty, aged 27 years, app'd at five hundred and fifty dols.	550
Maria Lee, aged 25 years, app'd at six hundred dols.	600
Chaney, aged 24 years, app'd at six hundred dols.	600
Hariet Patkison, aged 24 years, app'd at six hundred dols.	600
Hannah, aged 24 years, app'd at six hundred dols.	600
Lucinda, aged 23 years, app'd at six hundred dols.	600
Fanny Wyath, aged 23 years, app'd at six hundred and fifty dols.	650
Nancy Bradly, aged 23 years, app'd at six hundred dols.	600
Fanney Batts, aged 22 years, app'd at six hundred dols.	600
Polly, aged 21 years, app'd at six hundred dols.	600
Eliza, aged 20 years, app'd at six hundred dols.	600
Becky Scott, aged 20 years, app'd at six hundred dols.	600
Martha Lee, aged 19 years, app'd at six hundred and fifty dols.	650
Betsey Johnson, aged 19 years, app'd at two hundred dols.	200
Sally, aged 19 years, app'd at six hundred dols.	600
Emily, aged 19 years, app'd at six hundred dols.	600
Perein, aged 19 years, app'd at six hundred dols.	600
Caroline, aged 19 years, app'd at six hundred dols.	600
Francis Lee, aged 19 years, app'd at five hundred dols.	500
Harriet Brown, aged 18 years, app'd at six hundred and fifty dols.	650
Mary Pollard, aged 18 years, app'd at six hundred dols.	600
Henrietta, aged 18 years, app'd at six hundred dols.	600
Fanny Ross, aged 17 years, app'd at five hundred and fifty dols.	550
Grace, aged 17 years, app'd at two hundred dols.	200
Maria Ann, aged 17 years, app'd at six hundred dols.	600
Becky Betts, aged 17 years, app'd at six hundred dols.	600
Creacy, aged 17 years, app'd at five hundred and fifty dols.	550
Mary Jane, aged 16 years, app'd at six hundred dols.	600
Ann, aged 16 years, app'd at six hundred dols.	600
Ritty, aged 16 years, app'd at five hundred dols.	500
Celia, aged 15 years, app'd at four hundred and fifty dols.	450
Betsey Lee, aged 15 years, app'd at four hundred and fifty dols.	450
Melinda, aged 15 years, app'd at four hundred dols.	400

Sabra, aged 15 years, app'd at four hundred dols.	$400
Judith, aged 14 years, app'd at four hundred dols.	400
Francis May, aged 12 years, app'd at three hundred and fifty dols.	350
Effia, aged 9 years, app'd at three hundred dols.	300
John Henry, aged 3 years, app'd at one hundred and fifty dols.	150
Louisa, aged 1 year, app'd at one hundred dols.	100
Washington, aged 1 year, app'd at one hundred dols.	100
Delia Ann Betts, an infant, app'd at one hundred dols.	100
William Butcher, an infant, app'd at one hundred dols.	100
Lewis Marshal, an infant, app'd at one hundred dols.	100

And the following are the names, ages, and appraisement of the negroes, slaves for life, on the said Dalkeith plantation, viz:

Dick, aged 51 years, app'd at two hundred and fifty dols.	250
Philip Davis, aged 44 years, app'd at seven hundred dols.	700
Austin, aged 38 years, app'd at seven hundred and fifty dols.	750
Billy, aged 37 years, app'd at seven hundred and fifty dols.	750
Harry, aged 35 years, app'd at seven hundred and fifty dols.	750
Jesse, aged 34 years, app'd at seven hundred and fifty dols.	750
Ambrose, age 28 years, app'd at eight hundred dols.	800
Satchel, aged 28 years, app'd at eight hundred dols.	800
Buck, age 27 years, app'd at eight hundred dols.	800
Will, aged 27 years, app'd at eight hundred dols.	800
Shadrack Gordon, aged 27 years, app'd at seven hundred and fifty dols.	750
Squire, aged 27 years, app'd at seven hundred and fifty dols.	750
Lewis Harper, aged 26 years, app'd at eight hundred dols.	800
Africa, aged 25 years, app'd at seven hundred and fifty dols.	750
Jak, aged 25 years, app'd at eight hundred dols.	800
Phil Neal, aged 25 years, app'd at eight hundred dols.	800
Peter, aged 24 years, app'd at seven hundred and fifty dols	750
Charles Knox, aged 24 years, app'd at seven hundred and fifty dols.	750
Ellic Hill, aged 23 years, app'd at eight hundred dols.	800
Charles Thomas, aged 23 years, app'd at eight hundred dols.	800
Ellic Lee, aged 22 years. app'd at eight hundred dols.	800
Dave, aged 19 years, app'd at six hundred and fifty dols.	650
Nicholas, aged 19 years, app'd at six hundred and fifty dols.	650
John, aged 18 years, app'd at six hundred dollars	600
Jerry, aged 17 years, app'd at six hundred dollars	600
Jim, aged 17 years, app'd at six hundred dols.	600
July, aged 17 years, app'd at five hundred and fifty dols.	550
Jonas, aged 16 years, app'd at five hundred dols.	500
Edmond, aged 16 years, app'd at five hundred dols	500
Thornton, aged 16 years, app'd at five hundred dols.	500
Robert, aged 16 years, app'd at five hundred dols.	500
Ben Vertner, aged 16 years, app'd at five hundred dols.	500
Lewis Meagen, aged 16 years, app'd at two hundred dols.	200
Henry Collier, aged 16 years, app'd at five hundred dols.	500
William Hickman, aged 16 years, app'd at five hundred dols.	500
Toney, aged 16 years, app'd at five hundred dols.	500
George, aged 15 years, app'd at five hundred dols.	500
Benj'n Cole, aged 15 years, app'd at four hundred and fifty dols.	450
Shadrack Bland, aged 14 years, app'd at four hundred and fifty dols.	450
Harry Bacon, aged 13 years, app'd at four hundred dollars	400
William Cole, aged 9 years, app'd at three hundred dols.	300
Ben Cobb, aged 9 years, app'd at three hundred dols.	300
Abram, aged 7 years, app'd at three hundred dols.	300
Rachel, aged 43 years, app'd at three hundred dols.	300
Sarah Davie, aged 41 years, app'd at three hundred and fifty dols.	350
Nancy Cobb, aged 38 years, app'd at four hundred dols.	400
Cicely, aged 36 years, app'd at four hundred dols.	400

Inventory—Continued.

Mary Cole, aged 33 years, app'd at six hundred dols.	$600
Mary Lee, aged 33 years, app'd at five hundred dols.	500
Peggy, aged 31 years, app'd at five hundred dols.	500
Pleasant, aged 28 years, app'd at five hundred and fifty dols.	550
Chloe, aged 26 years, app'd at six hundred dols.	600
Becky, aged 26 years, app'd at five hundred and fifty dols.	550
Nancy Wright, aged 26 years, app'd at five hundred and fifty dols.	550
Amanda, aged 26 years, app'd at five hundred and fifty dols.	550
Milly, aged 25 years, app'd at six hundred dols.	600
Harriet, aged 23 years, app'd at six hundred dols.	600
Mary Hinds, aged 23 years, app'd at six hundred dols.	600
Mary Robinson, aged 23 years, app'd at six hundred dols.	600
Aggy, aged 22 years, app'd at six hundred dols.	600
Nancy Jones, aged 22 years, app'd at six hundred dols.	600
Sarah Jane, aged 22 years, app'd at six hundred dols.	600
Rachel Jones, aged 22 years, app'd at five hundred and fifty dols.	550
Amy Jane, aged 22 years, app'd at six hundred dols.	600
Rhoda, aged 21 years, app'd at six hundred dols.	600
Nelly, aged 21 years, app'd at six hundred dols.	600
Grace, aged 21 years, app'd at six hundred dols.	600
Rose, aged 20 years, app'd at six hundred dols.	600
Ana, aged 20 years, app'd at six hundred dols.	600
Sally Taylor, aged 20 years, app'd at six hundred dols.	600
Juliet, aged 20 years, app'd at six hundred dols.	600
Eliza Benton, aged 20 years, app'd at six hundred dols.	600
Martha Ann, aged 20 years, app'd at six hundred dols.	600
Sarah Williams, aged 20 years, app'd at six hundred dols.	600
Sally Johnson, aged 20 years app'd at six hundred dols.	600
Patsey, aged 19 years, app'd at six hundred dols.	600
Mathilda Taylor, aged 18 years, app'd at six hundred dols.	600
Creacy, aged 17 years, app'd at six hundred dols.	600
Sally Cobb, aged 15 years, app'd at six hundred dols.	600
Eliza Taylor, aged 13 years, app'd at three hundred dols.	300
Mathilda Hill, aged 9 years, app'd at two hundred and fifty dols.	250
Susan Davie, aged 8 years, app'd at two hundred and fifty dols.	250
Elizabeth, aged 7 years, app'd at two hundred and fifty dols.	250
Virgil, aged 3 years, app'd at two hundred dollars	200
Isaac, aged 18 months, app'd at one hundred and fifty dols.	150
Washington, an infant, app'd at one hundred and fifty dols.	150
Lucy Jane, an infant, app'd at one hundred dols.	100
Lucy Ann Gordon, an infant, app'd at one hundred dols.	100
Forty-two head of horses and mules, appraised at one hundred dols. each	4,200
Eighteen yoke of oxen, app'd at seventy dollars per yoke	1,260
Sixty-three head of cattle, app'd at eight dollars per head	504
Seven waggons, app'd at six hundred and fifty-five dols.	655
Sixty-six ploughs, app'd at four dollars each	264
Forty-two pair of gears, app'd at two dollars each	84
Axes, hoes, cane-knives, and blacksmith tools, app'd at	100
	$245,317

And having finished the said inventory and appraisement, the total amount of which is two hundred and forty-five thousand three hundred and seventeen dollars, and I have caused it to be signed by the said appraisers, and counsel for absent heirs, and the said executor, in presence of Samuel Heath and Thomas E. Wesson, witness of full age, resid-

ing in this parish, who sign with the said parties and me, judge, at the place and on the day first above written.

Signed, THOMAS ASKEN,
R. M. SCOTT,
JAS. M. DOWNES,
Counsel for absent heirs.
HECTOR McNEILL, *Executor.*
SAMUEL HEATH,
THOMAS E. WESSON,
RICHARD CHAS. DOWNES,
Parish Judge.

Filed, 2d July, 1839.

STATE OF LOUISIANA,
Parish of Madison, court of probates:

I certify, that the foregoing is a true copy of the original process verbal of the taking of inventory, on file among the records of said court, in the office of the parish judge of said parish.

Witness my signature, and the seal of said court, this 28th day of November, A. D. 1842.

Signed, R. C. DOWNES, *P. Judge.*

(Endorsed.)—441, D. Copy of inventory, filed 30th Nov'r, 1842.
Signed, JOHN T. MASON, *Clerk.*

Copy of will.—Document marked No. 1.

Be it remembered, that on Monday, the 24th day of June, 1839, it being the fourth Monday in said month, a probate court was commenced and held, in and for the county of Warren, and State of Mississippi, at the court-house of said county, in the city of Vicksburg.

Present, the honorable James Bland, judge; E. W. Morris, sheriff; Ed. B. Scarbrough, clerk.

Among the record of proceedings of said court are the following, to wit:

A writing purporting to be the last will and testament of Alexander McNeill, deceased, was this day produced in court by Hector McNeill, the executor therein named, and proven by the oaths of three witnesses, who testified that said last will and testament was entirely in the handwriting of the said Alexander McNeill, deceased, and that the same was written by said Alexander McNeill, after his arrival at the age of twenty-one years.

Thereupon, on motion of the said Hector McNeill, the said writing was ordered by the court to be admitted to record at probatum est., and is in the words and figures following, to wit:

I, Alexander McNeill, of Magnolia, Warren county, and State of Mississippi, being at present of sound body and mind, but knowing the uncertainty of *life*, do make and declare this to be my last will and testament. I was born on the thirty-first day of December, in the year of our Lord seventeen hundred and ninety-nine, in Chatham county,

State of North Carolina. When I am dead, my remains are to be decently interred by the side of that great benefactor of my family, John P. McNeill, at Springfield, Adams county, in this State, and, within a year after my death, a tombstone to be erected over them, and the epitaph written by my friend, Abijah Fisk. I give and bequeath to my brother, Henry C. McNeill, fifty dollars, in cash. I give and bequeath to my step-brother, Peter Pryan *Liler*, five hundred dollars, to be paid him at his majority; and, should he die before that period, then to his sister, Mary Crather Liler; and in default of her, to my brother, Hector McNeill. I give and bequeath to my step-sister, Mary Crather Liler, the silver ware that formerly belonged to her mother, to be given her at her marriage or majority; and should she never marry, or live to a legal age, then to her brother, Peter Pryan Liler; and should he never live to a legal age, then to my brother, Hector McNeill. Should either *by* step-sister or brother, before mentioned, marry, and die without issue, then the survivor is to have the silver ware; and should the survivor die without issue, then to my brother, Hector McNeill. I give and bequeath my case pistols to my brother, Hector McNeill; they are to remain in the McNeill family and name in perpetuity, excluding Malcom McNeill, and his issue, or the descendants of his issue.

I give and bequeath the balance of my property of every description to my brother, Hector McNeill: and should he die without male issue reaching the legal age, then to my step-brother, Peter Pryan Liler; and should he die without male issue, reaching the legal age, then to my brother, Henry C. McNeill. Henry, Joe, Adkins, and Carrey, have been good and faithful servants to me, and they are to be well treated after my death. I give and bequeath to each of them a full suit of mourning clothes, of fine quality, to be given to them within one month after my death; and I also bequeath to Henry fifteen dollars, in cash, to be paid to him on the thirty-first day of December, in each and every year, during his natural lifetime. Neither the silver ware, case of pistols, Harry, Joe, Adkin, and Carey, are ever to be sold for debts contracted by their respective owners; they are entirely exempt from, and not subject to, any debt whatever.

I nominate and appoint my brother, Hector McNeill, executor to this my last will and testament; and, having full faith and confidence in his capacity and integrity, I hereby release him from giving security for the faithful performance of *this* duties of executorship. My said executor is authorized to sell real and personal estate, and to convey a full and complete title, the sale of which property, with the crops and plantations, are to go to the payment of my debts, and are to be appropriated to no other purpose.

The State of Mississippi, Warren county, ss:

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify, that the foregoing order of court and writing, purporting to be the last will and testament of Alexander McNeill, deceased, are truly copied from the records in my office.

Given under my hand and seal of office, this 11th day of May, A. D. 1842.

[SEAL.] Signed, A. H. ROWLETT, *Clerk*.

The State of Mississippi, Warren county, ss:

I, Benjamin Springer, judge of probates of said county, do hereby certify, that Alfred H. Rowlett, whose name is subscribed to the above certificate, is, and was at the time of subscribing the same clerk of the probate court of said county of Warren, duly commissioned and qualified as such, and that full faith and credit is due, and should be given, to all his official acts as such, and that his said attestation is in due form of law, and done by the proper officer.

Given under my hand and seal, this 11th day of May, A. D. 1842.

[SEAL.] Signed, B. SPRINGER, *Probate judge*.

The State of Mississippi, Warren county, ss:

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify, that the hon. Benjamin Springer, whose name is subscribed to the above certificate, is, and was at the time of subscribing, the same, judge of the probate court of said county, duly commissioned and qualified as such; and that full faith and credit is due, and should be given, to all his official acts, as well in courts of justice as elsewhere.

Given under my hand and seal of office, at office, in the city of Vicksburg, this 11th day of May, A. D. 1842.

Signed, A. H. ROWLETT, *Clk*.

(Endorsed.)—441; A. McNeill; to will, No. 1.
Filed 2d December, 1842.
JOHN. T. MASON, *Clk*.—Copy.

Declaration of residence.

Document marked No. 2.

State of Louisiana, parish of Madison:

To the honorable Richard Charles Downes, parish judge in and for the parish of Madison, State of Louisiana.

Hector McNeill, heretofore a resident of Warren county, State of Mississippi, respectfully represents to your honor, that he is the owner of large possessions in this parish, consisting of plantations, negroes, &c., &c.; that he is desirous of acquiring residence, and to be entitled to the privileges, &c., &c., of a resident of this parish; that he is aged 31 years; that he is from the State of Mississippi, as aforesaid, and that he desires to pursue planting in this parish, and to reside and make his permanent domicil and home on the Walnut bayou, parish of Madison, Louisiana. Wherefore, he prays this notice may be duly filed and recorded.

Signed, H. McNEILL.

WALNUT BAYOU, LA., *Nov. 1st*, 1839.

State of Louisiana, parish of Madison:

I do hereby certify the foregoing to be a true copy of the original, on file and of record in my office.

Witness my signature and official seal, this 1st day of December, 1842.

[SEAL.] Signed, B. C. DOWNES,
Parish judge.
By E. CAVILEER,
Deputy Clerk.

(Endorsed.)—441; Hector McNeill, declaration of residence, No. 2. Copy filed 2d December, 1842.

Signed, JOHN T. MASON, *Clerk*.

Document marked No. 3.

Transcript from the circuit court of the United States, ninth circuit, for the E. D. of La., copied on page 7 of this transcript.

Copy of will.

Document marked No. 4.

I, Alexander McNeill, of Magnolia, Warren county, and State of Mississippi, being at present of sound body and mind, but knowing the uncertainty of life, do make and declare this to be my last will and testament. I was born on the thirty-first day of December, in the year of our Lord seventeen hundred and ninety-nine, in Chatham county, State of North Carolina. When I am dead, my remains are to be decently interred by the side of that great benefactor of my family, John P. McNeill, at Springfield, Adams county, in this State; and, within a year after my death, a tombstone to be erected over them, and the epitaph written by my friend Alvasey Fisk. I give and bequeath to my brother, Henry C. McNeill, fifty dollars in cash. I give and bequeath to my step brother, Peter Pryor Liler, five hundred dollars, to be paid him at his majority; and should he die before that period, then to his sister, Mary Crabtree Liler, and in default of her, to my brother Hector McNeill. I give and bequeath to my step sister, Mary Crabtree Liler, the silver ware that formerly belonged to her mother, to be given her at her marriage or majority; and should she never marry, or live to a legal age, then to her brother, Peter Pryor Liler, and should he never live to a legal age, then to my brother, Hector McNeill; should either my step sister, or brother, before mentioned, marry, and die without issue, then the survivor is to have the silver ware; and should the survivor die without issue, then to my brother, Hector McNeill. I give and bequeath my case pistols to my brother, Hector McNeill; they are to remain in the McNeill family and name, in perpetuity, excluding Malcolm McNeill and his issue, or the descendants of his issue. I give and bequeath the balance of my property, of every description, to my brother, Hector McNeill; and should he die without male issue, reaching the legal age, then to my brother, Henry

C. McNeill. Henry, Joe, Adkins, and Cassey, have been good and faithful servants to me, and they are to be well treated after my death. I give and bequeath to each of them a full suit of mourning clothes, of fine quality, to be given them within one month after my death; and I also bequeath to Harry fifteen dollars, in cash, to be paid to him on the thirty-first day of December, in each and every year during his natural lifetime. Neither the silver ware, case of pistols, Harry, Joe, Adkins, and Cassey, are ever to be sold for debts contracted by their respective owners; they are entirely exempt from, and not subject to, any debt whatever.

I nominate and appoint my brother, Hector McNeill, executor to this my last will and testament, *and* and having full faith and confidence in his capacity and integrity, I hereby release him from giving security for the faithful performance of the duties of executorship. My said executor is authorized to sell real and personal estate, and to convey a full and complete title; the sale of which property, with the crops of plantations, are to go to the payment of my debts, and are to be appropriated to no other purpose.

Recorded from the copy under certificate and seal of the probate court of Warren county, Mississippi, this first day of July, A. D. 1839.

Attest: RICHARD CHAS. DOWNES,
Parish Judge.

State of Louisiana, parish of Madison:

I do hereby certify the foregoing to be a true copy of the record in my office.

Witness my signature and official seal, this 24th day of November, A. D. 1842.

[SEAL.] Signed, R. C. DOWNES,
Parish Judge.
By E. CAVILEER,
D'y Clerk.

(Endorsed:) 441. Alexander McNeill's will—4 copy.
Filed December 1st, 1841.
Signed, J. W. COUCH, *D'y Clerk*.

Conveyance—Document marked No. 5.

State of Louisiana, parish of Madison:

Whereas I, Mandeville Marigny, marshal of the United States in and for the eastern district of Louisiana, by virtue of an order of seizure and sale, to be directed by the honorable the circuit court of the United States, ninth circuit, in said district sitting, bearing date the 23d of May, 1840, (No. 683 of the docket,) in the name of Andrew Erwin vs. Hector McNeill, test'y ext'r of Alexander McNeill, did seize, according the law, a tract of land, and fifty-seven negroes, shewn me as the property described in the said order of seizure and sale; and having given due notice of the said seizure to the said Hector McNeill, test'y ex'tor, as aforesaid, defendant in said seizure, in the manner pointed

out by law, and having advertised the said property for sale after the expiration of the legal delay, from the time of giving said notices by advertisements, composed as the law directs, and affixed at the door of the court-house, the door of the parish judge's office, and other places in the parish of Madison and State of Louisiana, in which the said property is situated, announcing that the said property will be sold on the premises, on Monday, the 6th day of July, 1840, between the hours prescribed by law, being full thirty days, exclusive of the day of sale, and the day on which the said advertisements were posted up, viz., the 4th day of June, 1840, and having further complied with all the additional provisions, requisites, and legal formalities; and whereas, on the said 6th of July, 1840, I repaired to the premises above mentioned, and between the hours of 12, A. M., and 1, P. M., of that day, the following property was offered for sale to the highest bidder, for cash, with the benefit of appraisement, after having been duly appraised, and the necessary declarations been previously made in relation to nature and description of the same, viz: A tract of land, situated in the parish of Carroll, now Madison, on the waters of the Walnut bayou, and being designated as the northeast quarter of section 48, the northwest quarter of section 49, and the southwest quarter of section 40, and so to cross the Walnut bayou as to give unto one Oliver B. Cobb as much front on the said bayou as practicable; and yet so to run into section 40, bearing northeast, as will make in the whole tract the aggregate amount of six hundred and forty acres, exclusive of sixty acres of cypress swamp. Said land is situate in township 17, of range 13 east; and the following slaves, to wit:

William, Cary, Jim, Nancy, Betts, Scott, Jim, Henry, Simon, Nancy, and two children, William and Richard, Chaney, Lucinda, Davy, Isaac, Jack, Minus, Milley, Kitty, and three children, Ritty, Becca, Harriet, Sam, Edmund, Joe, Little Henry, Mary, Eliza, Emily, Sally, Young Mary, Young Kitty, Frederick, Lucy, and two children, Young Isaac, Little Sam, Betty, Polly, Sam, a blacksmith, being forty-four in number, and the same, so far as they go, mentioned in the aforesaid order of seizure and sale; and having exhibited and read, in an audible voice, a certificate of the recorder of mortgages, of parish of Madison, a copy of which is annexed to this transfer, I proceeded to cry the aforesaid land and negroes together, at the request of the defendant; and whereas James Erwin, esq., bid the sum of sixteen thousand dollars, being the highest and last bid, and more than two-thirds of the appraised value, the whole of land and negroes aforesaid was adjudged to him. Now, therefore, know all men by these presents, that I, the said marshal, do, in consideration of the premises, and by virtue of the statutes in such cases made and provided, grant, bargain, sell, assign, transfer, and set over, to the said James Erwin, his heirs and assigns, the aforesaid tract or parcel of land, being the same bought of Vertner, by Henry S. Dawson and Conway R. Nutt, and by them sold to Alexander McNeill, to which deed special reference is made, and all the above mentioned slaves, all right, title, and interest, which

the said Alexander acquired, both to said land and slaves, as per act passed before Felix Bosworth, parish judge, and ex-officio notary public, in and for the parish of Carroll, on the 8th day of January, 1835, to hold the same to the said James Erwin, his heirs or assigns, forever; the said James Erwin, being present, accepts this conveyance.

In witness whereof, I have hereunto set my hand and seal, in the parish of Madison, and State of Louisiana, and in the said eastern district of Louisiana, this 7th day of July, 1840, and in the 65th year of the independence of the United States, in presence of Angnus McNeill; Leander A. Erwin, and Thos. Amonett, residing in the State of Louisiana, who have signed this act with the parties.

Signed, MANDEVILLE MARIGNY,
U. S. Marshal.
By ROBERT SLAUGHTER,
Dep'y Marshal.

Witnesses—
ANGNUS MCNEILL,
L. A. ERWIN,
THOMAS W. AMONETT.

Accepted: J. ERWIN. [SEAL.]

State of Louisiana, parish of Madison:

I do hereby certify the foregoing to be a true copy of the original on file and of record in my office, on the 5th day of August, A. D. 1840.

Witness my signature and official seal, this 1st day of December, A. D. 1842.
[SEAL.]

(Signed) R. C. DOWNS, *Parish Judge.*
By E. CAVILEER, *Dep. Clerk.*

Endorsed: 441. Marshal of Louisiana.
Conveyance to James Erwin. Copy, No. 5.
Filed 2d December, 1842.
(Signed) JOHN T. MASON, *Clerk.*

Petition.

Document marked No. 6.

State of Louisiana, parish of Madison,
Ninth district court:

To the hon. Frederick H. Davis, judge of the ninth judicial district, holding court in and for the parish of Madison, and State of Louisiana:

The petition of Hector McNeill, in testamentary executor of the last will and testament of his brother Alexander McNeill, of said parish and State, with respects, represents to your honor, that Alexander McNeill, the brother of your petitioner, died, some time in the latter part of the year eighteen hundred and thirty-nine; that said Alexander made and executed his last will and testament, constituting and appointing your petitioner testamentary executor of said will; that said will has been

duly recorded and admitted to probate in the parish of Madison, in this State; that your petitioner has been confirmed in his capacity of testamentary executor, has taken possession of said estate as executor aforesaid, procured an inventory to be made of the effects of said estate, consisting of lands, slaves, and immoveables, and is at this time administering said succession. Your petitioner further represents, that the succession of his said brother is indebted in large sums to different individuals; that the President, Directors and Company of the Exchange and Banking of New Orleans, or of the Exchange and Banking Company of New Orleans, claim to be mortgage creditors of said succession in the sum of eighteen thousand seven hundred and fifty dollars, with seven per cent. per annum interest thereon from the 8th day of December, A. D. 1837, until paid; that the said President, Directors, and Company of the Exchange and Banking Company of New Orleans, or of the Exchange and Banking Company of New Orleans, did, by their attorney, W. E. Edwards, apply to your honor to obtain an order of seizure and sale, directing the sheriff of the parish of Madison to seize and sell certain mortgaged property, described in plaintiff's petition, to satisfy the aforesaid debt of eighteen thousand dollars, with interest as aforesaid; that said order was granted by your honor on the 18th of May, 1840; that, in pursuance of said order, Thomas B. Scott, sheriff of said parish, seized and advertised for sale the property described in plaintiff's petition, the following slaves: Cerelep, aged 23 years; Harriet Knight, aged 40 years; Vincent, aged 40 years; Harriet Brown, aged 16 years; Becky Bets, aged 15 years; Ann, aged 15 years; Mary Jane, aged 15 years; Fanny Bets, aged 20 years; George Bets, aged 23 years; Sabra, aged 13 years; Phillis, aged 12 years; Ceira, aged 13 years; Wealthy, aged 40 years; Jerry, aged 17 years; Tom, aged 16; William Page, aged 13 years; Celia, aged 14 years; John Shepherd, aged 23; Henry Venable, aged 22 years; Henry Hill, aged 22 years; Perine, aged 17 years; Orange, aged 13; Caroline, aged 17 years; Francis Lee, aged 17 years; Maria, aged 21; Malinda, aged 13 years; George Moore, aged 20 years; Mat, aged 23; Acolen, 23 years; Edward, aged 18 years; Amy, aged 17 years; Asea, aged 17 years; Harriet, aged 20 years; Alick Lee, aged 22 years; Alick Hill, aged 22 years; Philip Davy, aged 40 years; Sarah Davy, aged 35; Rhody, aged 13; Gusy, aged 16; Buck, aged 24 years; all which said slaves belong to the succession of said Alexander McNeill, administered by your petitioner, testamentary executor as aforesaid. Your petitioner respectfully begs leave to make opposition to the order of seizure and sale, granted as aforesaid, for the following reasons, to wit: Your petitioner avers, that long before said order of seizure and sale was granted, the succession of Alexander McNeill had been opened in the parish of Madison; that the last will and testament of said Alexander McNeill had been admitted to probate; that your petitioner, appointed testamentary, had both caused an inventory of the effects of said succession to be made, and that previously to granting the aforesaid order of seizure he was administering said succession as testamentary executor aforesaid; all which will fully appear by reference to the pro-

ceedings had in the probate court, and to be exhibited on the trial: Wherefore your petitioner avers, that the district judge was without jurisdiction; that the debt, if any there was, being due from a succession, legally opened and administered by an executor legally appointed, the probate court could alone entertain jurisdiction, and grant the order of seizure and sale, if such order could be legally granted. Your petitioner would further shew, that the note or bill to which the said mortgage *acumpy*, and which it is designed to secure, was drawn due at one year after date (to wit, 8th Dec'r, 1837,) to the order of Wilcox, Anderson & Co., and by them appears to have been endorsed to Martin, Pleasants & Co., and by them appears to have been endorsed to the Exchange & Banking Company of New Orleans. Now, your petitioner avers, that there is no authentic testimony in said act of mortgage that Wilcox, Anderson & Co., or Martin, Pleasants & Co., have ever parted with their interest in said note or bill to the Exchange & Banking Company, or to any other person; and the judgment of this court in granting said order of seizure and sale, would not be conclusive or "*res judicata*" in the premises, and the succession of Alexander McNeill might be adjudged to pay said sum to Wilcox, Anderson & Co., or to Martin, Pleasants & Co., if at any time they would dispute the title of the said Exchange & Banking Company to said bill or note, and your petitioner could not plead a satisfaction of the judgment in the aforesaid order of seizure and sale in bar of their rights, if any they at any time should appear to have.

Your petitioner, therefore, prays, for these and other irregularities and illegalities in the premises and proceedings, that an injunction be granted him to stay and arrest all further action or proceeding in said order of seizure and sale, until this opposition be heard and adjudged. Petitioner prays, that Thomas B. Scott, sheriff of the parish of Madison, and the Exchange & Banking Company of New Orleans, residing in New Orleans, through their proper officers, be cited to answer hereto; that they be enjoined and restrained from all further proceedings in the said order of seizure and sale, until this opposition is heard; and, upon final hearing, your petitioner prays judgment rendering said injunction perpetual. Your petitioner prays, also, for judgment against the Exchange & Banking Company of New Orleans, for two thousand five hundred dollars for the damages which he has been put to in defending the said succession from said illegal order of seizure and sale, which said sum of twenty-five hundred dollars, he prays to be allowed to compensate against any claim or debt which said succession may owe to said company; otherwise that he may have judgment against said Exchange & Banking Company of New Orleans, for said sum aforesaid, together with the costs of this suit; your petitioner prays for general relief in the premises, &c., &c.

(Signed) JOHN B. BEMISS and
JACOB C. SEALE,
Attys. for Hector McNeill & Co.

(Endorsed.)—303, 9th district court. Exchange and Banking Co. of New Orleans vs. Hector McNeill et al. Petition for injunction filed 16th July, 1840.

Signed, JOHN T. MASON, *Clk.*

Minutes.

And on Saturday, December 3d, A. D. 1842, the following entry was made on the minutes of the court, page 389:

A. J. LOWRY, curator,
vs.
JAMES ERWIN. } 441.

In this case it is agreed that the judge take the record to Concordia; and his judgment, when returned and filed in the clerk's office, shall be as obligatory on all the parties as if rendered in open court during term, reserving to either party the right to move a new trial on any one of the first three days of next term; and said judgment shall be spread on the minutes of this term.

Minutes.

And afterwards, to wit, on Tuesday, the 2d day of May, A. D. 1843, the following order was entered on the minutes, page 401:

ALFRED J. LOWRY, curator,
vs.
JAMES ERWIN. } 441.

In pursuance of the order of this court, dated December 3d, 1842, it is ordered, that the judgment rendered in this suit, now filed in court, be entered on the minutes of the court as of its December term, 1842, nunc pro tunc, which is in the words following, to wit:

Judgment as entered on the minutes.

A. J. LOWRY, curator, &c.,
vs.
JAMES ERWIN. }

May 2d, A. D. 1843, pages 401 to 406. On trial, ninth district court for the parish of Madison.

This is an action of revendication, by the curator of the vacant estate of *of* Alexander McNeill, deceased, to recover a plantation containing 640 acres, exclusive of 60 acres of cypress swamp, and 44 slaves, with their increase, attached to said plantation; together with the rents and profits of the said slaves accruing since July, 1840.

The petitioner alleges, that Alex'r McNeill, at his decease, was the owner and in possession of said property, which is of the value of $100,000, with a revenue worth $25,000 per annum for the past 3 years, and which now still belongs to his succession; that the defendant, James Erwin, in July, 1840, illegally, and by fraud and collusion, without legal title, took possession, and continues to hold and appropriate said property to his own use, together with the fruits and revenues,

pretending and claiming to be the owner, and refuses to deliver possession. The petitioner prays that the succession of Alexander McNeill, and he, as the legal representative thereof, be decreed to be the legal owner of all of said property, its increase and improvements, and that he be put in possession thereof; and that said Erwin be adjudged to pay $25,000 per year since the month of July, 1840, until possession is restored.

The defendant pleads the general issue, and sets up title to the premises under a judicial sale by the United States marshal. He avers that he became the purchaser at public auction, by the U. S. marshal, on the 6th day of July, 1840, who sold the property under a judgment, and by virtue of a writ of seizure and sale, in the case of Andrew Erwin vs. Hector McNeill, testamentary executor of Alexander McNeill, deceased, in the 9th circuit court of the U. States, for the eastern district of Louisiana; said purchase being for the sum of $16,000 *cash*, which was applied to the payment of the debt due on a mortgage by said succession. He annexes a copy of the marshal's deed of sale, and the record of the judgment or order of seizure and sale under which the marshal acted.

The defendant further avers, that he was put in possession of all of said property, except the slaves Kitty Dixon and her children, and Little Henry or Henry Lee, and remained in possession for some time, until he sold them; and made valuable improvements thereon, by clearing land and erecting houses and other works, thereby enhancing the value of said property $50,000; that the crops and revenues were of far less value than that stated in the petition, and made at great expense and labor.

The defendant further avers, that he is a purchaser in good faith; that the sale to him is valid in law; the judgment under which it was made being *res judicata*, and not appealed from; all of said proceedings remain in force, which he pleads in bar of this suit. But, in case said sale should be annulled, and the plaintiff recover the property, that he be reimbursed the purchase money with interest, and the value of his improvements. He further avers, that in no case can he be dispossessed, until full and entire payment of said sums of money. He prays to be dismissed, with the costs.

The facts of the case, as disclosed by the evidence, show, that on the 28th of May, 1839, Alexander McNeill died at his residence in Warren county, State of Mississippi, leaving a will, and naming his brother, Hector McNeill, of said State, his testamentary executor. The plantation and slaves in question belonged to and made part of his succession at the time of his decease, and are situated in the parish of Madison, in this State. The will was duly probated in the State of Mississippi. It authorized the executor to take possession of the property of the deceased; to sell and dispose of the same to pay debts, legacies, &c.

On the 6th of June, 1839, Hector McNeill, styling himself a citizen of Coahoma county, State of Mississippi, presented his petition to the judge of probates of the parish of Madison, in this State, alleging and

showing the death of his brother, but that his will was not yet probated in Mississippi for want of a court; and that in the mean time he prayed that an inventory be made of the property of his deceased brother's succession situated in that parish. An inventory was made by the parish judge; and the will, after it was probated and entered of record in Mississippi, was produced duly authenticated, ordered to be registered, and made executory, and the executor duly empowered to administer the succession in July following.

On the 1st of November, 1839, Hector McNeill made a declaration of domicil before the parish judge of the parish of Madison, to become a resident—to reside and make his permanent domicil and home on the Walnut bayou in said parish. He was shortly afterwards discharged from his executorship, and seems never to have been an actual permanent resident. In the mean time, however, the property now in contest, which made the principal part of his brother's succession in Louisiana, to *wit*, on the 6th of July, 1840, was sold by the U. S. marshal, and possession delivered to the defendant. The present plaintiff was appointed curator of Alex'r McNeill's succession in said parish, as a *vacant one*, by the order of probate court the 23d of March, 1841, and this suit was instituted the 16th August following.

The order or judgment of the circuit court of the U. States under which the marshal's sale took place, is in the following words, viz:

"Inasmuch as the mortgage within mentioned imports a confession of judgment, let an order of seizure and sale issue for the sale of the mortgaged property, if the sum within claimed is not paid after legal notice."

Signed, P. K. LAWRENCE, *U. S. Judge*.
NEW ORLEANS, 23 *May*, 1840.

The writ of seizure issued the same day, and the marshal returns, that on the 29th May, 1840, he delivered a copy of the papers and notice of demand to Hector McNeill, stating, that *after three days shall have expired from the date of this demand*, and in default thereof, the order of seizure then in his hands will be levied on the plantation and negroes in said petition mentioned. On the 1st of June, 1840, the marshal made the seizure, and notified the same to Hector McNeill. On the 4th of June he advertised the property for sale, to take place on the 6th of July, 1840, for cash. The sale was made accordingly on the premises, after appointing two appraisers, and the defendant became the purchaser for the sum of $16,000, including the land and the 44 slaves now claimed. They were appraised to $23,845.

The evidence also shows that the distance from New Orleans, whence the order and writ of seizure issued, to the place of sale and alleged residence of the defendant, in the parish of Madison, is 430 miles, by the usually travelled route.

Upon these pleadings, issues, and the evidence adduced, the case must be decided on the principles and provisions of law fairly applicable to it. It presents questions of great importance to the people of this

State, as regards the rights to property, and involves legal principles growing out of the conflicting jurisdictions of the Federal and State courts, of much intricacy and grave import. This is an action to set aside a marshal's sale, made under and by authority of an order of seizure and sale granted by the Federal court, sitting as a circuit court, in the State of Louisiana. The defendant shields himself under this order, or, as he terms it, a *judgment* of that court, and the marshal's deed of sale, purporting to have been made in pursuance of said judgment. It is a long and well-established principle of our jurisprudence, that, in forced *sales* or *alienations*, the formalities required by law must be strictly fulfilled, to give validity to the sale; and persons having an interest to have such alienations annulled for want of legal formalities, may claim judicially the rescision of such sale. *Dafour vs. Camfranc*, 11 *Martin's*, 607, 673; *McDonough vs. Gravies' curator*, 9 *La. Rep.*, 542.

It follows, therefore, as a consequence, that if the forms prescribed by law are not pursued, the *right* to the property is not transferred, and the purchaser acquires no title. *Grant & Olden vs. Walden*, 6 *La. Rep.*, 623.

The law is also well settled, that, to support a sheriff's, or other *forced sales*, under execution or order *and writ of seizure*, there must be a valid judgment or decree, rendered by *a court of competent* jurisdiction, which confers the authority to sell; and without which the title is not divested. See case of *Beard, tutor, &c., vs. Morancey*, (decided at Alexandria, October term, 1842, not yet published,) and other cases there cited.

It is conceded that the validity of a judgment of the Federal court cannot be enquired *into collaterally*, or declared null, by a State court, or any other, except that in which it was rendered. Neither is it contended that the district court of the State can go behind or enquire into the correctness of a judgment or decree of the circuit court of the United States, for that would be exercising a revisory power, which only belongs to a court of appellate jurisdiction. But it is claimed for the district court, in the exercise of its original and general jurisdiction, in an action of revendication, or suit to recover property, the title to which is set up by the defendant, under an order and writ of seizure and sale by the United marshal, the right and power to examine it, and see if the decree or order of seizure and sale was rendered by a court of competent jurisdiction. It has been held, that "the purchaser, under a decree of the orphans' court, is bound to look to the jurisdiction of the court that rendered it." If there is a total want of jurisdiction the proceedings are void and a mere nullity, and confer no rights. *Lalanne's heirs vs. Moreau*. 13 La. Rep., 431.

Thompson vs. Tolmir, 2 Peters' U. S. Rep., 157; 1 Peters, 340, Elliot et al. vs. Peirsol et al. It being then conceded that, in passing on the case under consideration, this court can examine the judgment or order of seizure and sale under which the property now claimed was seized and sold by the U. States marshal, so far as to ascertain if the

Federal court had jurisdiction, either *ratione personal* or *ratione material*, the enquiry *when* then be—1. Had the circuit court of the United States jurisdiction over the *persons* or *subject-matter* in granting the order or seizure in question, and was there such a judgment as authorized the sale in question?

2. Have the formalities required by law in making forced sales or alienations by the marshal been complied with in this case?

In order to take jurisdiction over the parties to the original suit in this case, the party defendant must have been a *citizen of the State of Louisiana*. The 11 section of the Judiciary act of Sept'r 24th, 1789, provides, that the circuit courts of the United States shall have original cognizance, *concurrent* with the courts of the *several States*, of all suits of *a civil* nature at common law, *or in equity*, when the matter exceeds (exclusive of costs) the sum of 500 dollars, when the suit is between a citizen *of the State where the suit is brought and a citizen of another State*." See Judiciary act, *Sept'r* 24, 1789, *sec.* 11, *Conkling's Treatise and Prac. in United States Court*, *2d ed.*, *pages* 57 *and* 98.

The evidence shows that Alexander McNeill, the debtor, was a citizen of the State of Mississippi, and resided there at the time of his death. His will was opened and probated there. Hector McNeill, his testamentary executor, was also a citizen and resident of Coahoma county, in that State, when the succession of his deceased brother was opened in the parish of Madison, in this State, and so styled himself, when he presented himself as the executor to the court of probates of that parish for an inventory to be made, and when the will was ordered to be registered and made executory in that parish. It does not appear that he ever actually *resided* and was *domicilled* there. It is true, on the 1st of November, 1839, he made his declaration of domicil, and declared his intention to become a resident of the parish of Madison, but his residency seems to have been but casual and temporary; only a little over *six months* had elapsed from the time of making his declaration of domicil to the granting of the order of seizure and sale. The supreme court of this State have expressly decided, that a person *resident* in *another* State, attempting to acquire a *residence here*, *shall have remained within the same for* 12 *months following the date of his notice to the judge*, *&c.*" Boone vs. Savage, 14 La. Rep., 169.

Perhaps it may be said that the succession of A. McNeill, opened in the parish of Madison, represents him as to location and residence, and would be sufficient to give jurisdiction as to residence of a party defendant in the Federal court. The words of the law are, that the defendant *must be a citizen* of the State where the suit is brought. There is a wide difference between the character of a *citizen and a succession*, although the latter represents a deceased citizen in many cases. I am inclined to the belief that Hector McNeill was not *a citizen* of Louisiana at the time the order of seizure and sale was granted, and that the succession of Alexander McNeill could not be considered as representing the defendant in that case, and that, consequently, the *cir-*

cuit court was without jurisdiction *ratione personal*. But I will leave this question open, and pass to the other one. See the case of Childress vs. Emory, 8 Wheaton, 642, on the right of executors to sue.

It appears clear that the *circuit court* was without jurisdiction *ratione material*. The 11th section of the Judiciary act, passed by Congress Sept'r 24, 1789, already cited, says, "that the *circuit court* of the United States shall have *original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity*, &c." From this provision, and from the reason of things, the United States courts could not exercise any general jurisdiction over matters that were denied to the State courts of general jurisdiction, unless expressly given by an act of Congress. In other words, the circuit court of the United States are governed by the laws of a State, when adjudicating upon rights to property in a State. If this position be true, it results that the circuit court was without jurisdiction in issuing the order of seizure and sale *ratione materaie*. No State court of *general jurisdiction* can issue an order of seizure and sale to take property from the jurisdiction of the probate court. *The code of practice, art.* 924, *No.* 3, declares, that "courts of probates have the exclusive power to decide on claims for money which are brought against successions administered by *executors testamentary, curators* or *administrators* of *successions*, and to establish the order of privileges and mode of payment." The property of every succession, the moment it is opened, is withdrawn from the courts of general jurisdiction, and given to the probate court, which is one of special and exclusive jurisdiction in such cases. The moment a party dies his succession is opened, and the jurisdiction of the court *of the court* of probate attach, and all estates of deceased persons must pass thro' it. The provisions of our law give it this exclusive jurisdiction *when the deceased had no residence*, but left property in the State, as well as over those successions, when he had his *residence* and domicil here. So, where a suit had been commenced by attachment, in a court of general jurisdiction sitting in New Orleans, the defendant died during its pendency, and his succession was opened in the parish of Concordia, the suit was ordered to be transferred to the probate court for that parish, *and cumulated in the proceedings of the succession*. *Oakey et al. vs. Ducker*, 13 *La. Rep.*, 375.

All money demands, even those secured by mortgage, when the debtor dies, must be presented to the executor or administrator of his succession, and be paid by order or decree of the court of probates, where the succession is opened. *La. code, art.* 928. 929, *Co. Pr. art.* 983.

In the present case, the estate of McNeill being in a course of administration by the testamentary executor in the court of probates, the circuit court of the United States was without jurisdiction to interfere or grant an order of seizure and sale, which required the property to be taken from the executor and sold by the U. S. marshal. "No bearer of a claim for money against a succession administered by a curator appointed by a judge, or by a testamentary executor, shall commence an action against such succession before presenting his claim to the curator, testamentary executor, &c." Code Pr., art. 984 and 985, '6, '7.

In the case of Shroeder's Syndics vs. Nicholson, 2 La. Rep. 350, the S. Court say: "We have looked in vain for any thing in the Constitution of U. States, which gives this advantage to a citizen of another State (to seek a different remedy in the United States court) over our own citizens; and which makes right depend not on contract or the law of the contracts, but on the tribunal where the remedy is sought."

II. I will examine how far the formalities of the law regulating and governing forced alienations, or judicial sales, have been complied with in the present case. It is clear the circuit court of the United States was proceeding under the State laws and practice, when it granted the order of seizure and sale in question. Such a procedure is unknown to the laws of the United States, or even to chancery practice. It must tested by our statutes, or the provisions of the code of practice regulating the executory process. These laws prescribed a certain mode of making the seizure, and the formalities to be observed in advertising and making the sale, and must be strictly pursued on pain of nullity.

The code of Practice, art. 735, provides that in *obtaining this order of seizure, it shall suffice to give three days notice to the debtors, counting from that on which the notice is given, if he resides on the spot, adding a day for every* 20 *miles between the place of his residence and the residence of the judge "to whom the petition is presented."* In the case before me the order emanated from the U. S. judge, residing in New Orleans, and the place of holding his court; the distance from there to the residence of the debtor, which was alleged to be in the parish of Madison, is shown to be 430 miles. This would require 22 additional days to the 3 days required to *elapse before seizure*. But the marshal's return shows that he gave notice to Hector McNeill, the alleged defendant, on the 29th of May, of *the demand*, and that the writ of seizure had issued; and on the 1st day of June following he made the seizure; thus allowing *only two clear days to expire* from the notice of demand, which is to precede the seizure, and the actual seizure. This of itself is good ground of nullity of the sale. See case of *Woodward vs. Dashiell*, 15 *La. Rep.* 184. *Rowlett vs. Shepherd*, 7 *Mar. N. S.* 513.

Upon a full consideration of the *two grounds* of nullity of the marshal's sale, viz: The want of jurisdiction in the court which rendered the judgment or order of seizure and the deficiency in the notice of seizure as stated, I have concluded that the sale must be *annulled and set aside*, and that the plaintiff recover the property in contest. But he must refund the purchase money with interest to the purchaser. The last subject involved in this suit is the respective claims of the parties to rents and profits and for improvements.

The defendant is entitled to full compensation for the value of the improvements he may have put on the land since the date of his purchase, and after allowing his expenses must account for the rents and profits.

It appears by the evidence that the defendant was, previous to his purchase at the marshal's sale, in possession of a tract of land adjoining

the tract in dispute, a part of which was in cultivation, and that the two tracts composed what is called the "Orkney Plantation;" that of the tract in dispute 400 acres were in cultivation in 1840, and 200 acres upon the other tract; that there were 43 hands from the purchase at marshal's sale employed by the defendant in that year, and 32 others, making together 75; that this force of slaves was employed, and the two tracts cultivated together, and that the gross revenues of the whole was that year about $25,625, and the expenses of the whole place for that year, after the defendant came into possession in July, about $25,000. The next year, 1841, there were in cultivation 400 acres on the land in dispute, and the same number of hands. On the other tract, 260 acres in cultivation, and 40 hands employed, not purchased at the marshal's sale. That the gross revenues of the whole place were $16,104, and its expenses $6,000. That, in 1842, there were in cultivation on the tract in dispute 430 *years*, and on the other tract of land 270 acres, and that the respective forces were nearly equal; that the gross revenues were $10,400, and the expenses $4,000. That the value of the improvements made on the land in dispute, consisting of buildings erected, cisterns made, and land cleared, &c., *is* as stated by the witnesses, who managed the plantation, is $5,950. By giving to the plaintiff two thirds of the gross revenues of 1840, and one third to the defendant, and for the two next years dividing the revenues equally between them, and apportioning between them the expenses during the three years in the same ratios, we shall approximate as near the relative right of the parties as seems possible. This will give to the plaintiff $30,335, subject to deductions according to the above principles, of $12,616, leaving a balance in favor of the curator of McNeill's estate of $17,719, against which the defendant, under the pleadings in his answer, is entitled to compensate the price paid by him for the property, the sum of $16,000, with five per cent. interest to the date of this judgment, since the 6th of July, 1840, amounting in all to $18,155 55, and leaving a balance of due by the plaintiff as curator of McNeill's estate to the defendant of $436 55.

Wherefore, it is considered by the court, that the law and evidence being in favor of the plaintiff, he is entitled to recover from the defendant the land and slaves in question. It is therefore ordered and decreed, that the plaintiff, as curator of the vacant succession of Alexander McNeill, deceased, do recover of the defendant all the property by him described in his petition, with all its increase, and all the buildings and improvements thereon, being with the exception of the slave Kitty Dixon and her children, and Little Henry, or Henry Lee, all that is claimed in this suit, and that as to them there be judgment of non-suit. And it is further ed, that the defendant, James Erwin, recover in reconvention of the succession of Alex. McNeill, deceased, four hundred and thirty-six dollars and 55 cents, with five per cent. interest from the date of this judgment, the same being for the balance of the price and interest paid by said Erwin for the property, over and above the value of the fruits and revenues recovered by the plaintiff of the said Erwin,

after deducting the value of the improvements as is hereinbefore set forth. And it is further ordered that the defendant pay costs.

Done and signed at Chambers, this 18th of March, 1843.

Signed, THOMAS CURRY,
District judge, 9th judicial district.

(Endorsed.)—Lowry, curator, &c., vs. James Erwin. Judgment rendered at Chambers, March 18th, 1843. Filed May 2d, 1843.
A. R. POTTER, *Dep'y Clerk.*

Minutes.

And afterwards, to wit, on Wednesday, May 3d, A. D. 1843, the following entry was made on the minutes of the court, page 407:

ALFRED J. LOWRY
vs. } 441.
JAMES ERWIN.

Motion for new trial filed.

Motion for new trial.

Ninth district court, parish of Madison:

ALFRED J. LOWRY, curator, &c.,
vs. } No. 441.
JAMES ERWIN.

The defendant in this case moves the court that a new trial be granted him, on the following grounds:

1. The judgment herein obtained against him is contrary to the law and the evidence.

2. That he has discovered new evidence material to his writ since the rendition of the judgment, though he had used due diligence to obtain the necessary testimony.

Signed, BEMISS & WINTER & AMONETT.

Affidavit.

State of Louisiana, parish of Madison:

Personally came and appeared before me, the undersigned authority, James J. Amonett, one of the counsel for James Erwin in the suit of Alfred J. Lowry, curator, &c., vs. James Erwin, who, being duly sworn, deposes and says, that he has discovered new evidence material to the suit since the rendition of the judgment; that he expects to prove by Thomas W. Amonett, the waiver of legal delay after seizure by Hector McNeill, testamentary executor of Alexander McNeill; that he was not aware of the existence of this evidence on the former trial, though he had used due diligence to obtain the necessary testimony.

Signed, J. J. AMONETT.

Sworn to and subscribed before me, this 3d day of May, A. D. 1843.

Signed, JOHN T. MASON, *Clerk.*

(Endorsed.)—No. 441, Alfred J. Lowry, curator, &c., vs. James Erwin. Motion for new trial filed May 3d, 1843.

Signed, A. R. POTTER, *Dep'y Clerk*.

Minutes.

And afterwards, to wit, on Wednesday, May 10th, A. D. 1843, the following entry was made on the minutes of the court, page 439:

ALFRED J. LOWRY
vs. } 441.
JAMES ERWIN.

Motion for new trial overruled.

Minutes.

And afterwards, to wit, on Thursday, May 18th, A. D. 1843, the following entry was made on the minutes of the court, page 451:

ALFRED J. LOWRY, curator, &c.,
vs. } 441.
JAMES ERWIN.

Motion for suspensive appeal filed. Motion sustained; and it is ordered by the court, that the bond be filled at forty-two thousand dollars, the appeal returnable to supreme court at Alexandria, on the first Monday of October next, A. D. 1843.

Motion for appeal.

LOWRY, curator, &c.,
vs. } No. 441.
JAMES ERWIN.

The defendant moves the court to grant him a suspensive appeal in above entitled suit, returnable to the next term of the supreme court for Louisiana at Alexandria, upon giving bond according to law; also prays the court to fix the amount of the bond.

Signed, JOHN B. BEMISS,
Att'y for defendant, James Erwin.

(Endorsed.)—441, A. J. Lowry, curator, &c., vs. James Erwin. Motion for appeal filed 18th of May, 1843.

Signed, JOHN T. MASON, *Clk*.

Bond.

Ninth district court, parish of Madison, 9th judicial district:

A. J. LOWRY, curator,
vs. } 441.
JAMES ERWIN.

Know all men by these presents, that we, James Erwin, of the city of New Orleans, State of Louisiana, as principal, and Thompson J. Player, Thomas M. Burland, and Wm. Amonett, as securities, are held

and firmly bound, in solido, unto Alfred J. Lowry, curator, in the sum of forty-two thousand dollars, current coin of the United States of America, well and truly to be paid to the said Lowry, his heirs or assigns; for the faithful payment whereof, we bind ourselves, our heirs and assigns, in solido, firmly by these presents, as witness our hands this 19th day of May, A. D. 1843.

Whereas the above bounden James Erwin has obtained from the honorable the ninth district court aforesaid, an order of a suspensive appeal from a certain final judgment rendered by said court at its May term, A. D. 1843, and styled A. J. Lowry, curator, vs. James Erwin, No. 441, of the docket of said court, which said appeal is made returnable into the supreme court of this State, sitting in the town of Alexandria, for the western district of said State, and is made returnable into said supreme court, on the first Monday of October, A. D. 1843.

Now, the condition of the above obligation is such, that if the said James Erwin, appellant, shall prosecute his said appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in said appeal, then this obligation to be null and void; otherwise to remain in full force and virtue, this day and *state* above written.

Signed, L. A. ERWIN,
Agent and atty. in fact for J. Erwin.
T. T. PLAYER,
By his agent and attorney in fact, W. Amonett.
THOS. M. BURLAND.
WILLIAM AMONETT.

Attest:
ISAAC CASNER.

(Endorsed.)—441; A. J. Lowry, cur'r, vs. James Erwin; bond. Filed May 19th, 1843.

JOHN. T. MASON, *Clk.*

State of Louisiana, parish of Madison:

Clerk's office, ninth district court.

I, John T. Mason, clerk of the 9th judicial district court of the State of Louisiana, in and for the parish of Madison, do hereby certify, that the foregoing ninety-six pages, numbered from one to ninety-six, inclusive, contain a full, true, and complete transcript of all the proceedings had, and of the documents filed, in a suit, No. 441, on the docket of said court, wherein A. J. Lowry, curator, &c., is plaintiff, and James Erwin is defendant; and also, that it contains a full and true statement of all the evidence afforded on the trial of said suit.

Witness my signature, and impress of the seal of said court, this first day of June, A. D. 1843.

[SEAL.]

JOHN T. MASON,
Clk. of said court.

Supreme court, State of Louisiana, western district Alexandria, October term, 1843.

Be it remembered that, on Monday, the second day of October, in the year of our Lord, 1843, the supreme court of the State of Louisiana, for the western district of said State, assembled at Alexandria, agreeably to adjournment, when there were present, F. X. Martin and A. Morphy, two of the judges of said court, when there not being a quorum of the judges of said court, the same was adjourned until Tuesday, the third day of October, 1843.

Tuesday, the 3d of October, 1843, the court met agreeably to adjournment, when there were present F. X. Martin, H. A. Bullard, A. Morphy; and the court adjourned until Wednesday, the 4th of October, 1843. And on Wednesday, the 4th day of October, the court met agreeably to adjournment; present, judges same as yesterday, when the court adjourned until Thursday, the 5th day of October, 1843. And on Thursday, the 5th of October, 1843, the court met agreeably to adjournment, when there were present Judges Martin, Morphy, and Simon. And now be it remembered, that on this day, being the fifth day of October, in the year of our Lord 1843, James Erwin, the defendant and appellant, in the preceding case of A. J. Lowry, curator, vs. him, the said James Erwin, did file, in the office of the clerk of the supreme court of the State of Louisiana, in and for the western district of said State, at Alexandria, the transcript of said cause, of which transcript the preceding seventy-six pages, numbered from 1 to 76, contains a true and faithful copy.

When the court adjourned over to Friday, the 6th day of October, A. D. 1843. Friday, the 6th day of October, 1843, the court met agreeably to adjournment, when there were present F. X. Martin, A. Morphy, and E. Simon; and the court adjourned until Saturday, the 7th of October, 1843. And on Saturday, the 7th of October, 1843, the court met agreeably to adjournment, when there were present F. X. Martin, A. Morphy, and E. Simon; and the court adjourned until Monday, the 9th of October, 1843. And on Monday, the 9th of October, 1843, the court met agreeably to adjournment, when there were present F. X. Martin, H. A. Bullard, A. Morphy, and E. Simon; and the court adjourned until Tuesday, the 10th of October, 1843. And on Tuesday, the 10th of October, 1843, the court met agreeably to adjournment, when there were present F. X. Martin, H. A. Bullard, A. Morphy, and E. Simon; and the court adjourned until Wednesday, the 11th of October, 1843. And on Wednesday, the 11th of October, 1843, the court agreeably to adjournment, when there were present F. X. Martin, H. A. Bullard, A. Morphy, and E. Simon; and the court adjourned until Thursday, the 12th of October, 1843. And on Thursday, the 12th of October, 1843, the court met agreeably to adjournment, when there were present F. X. Martin, H. A. Bullard, A. Morphy, and E. Simon; and the court adjourned until Friday, the 13th of October, 1843. And on Friday, the 13th of October, 1843, the court met agreeably to adjournment, when there were present

F. X. Martin, H. A. Bullard, A. Morphy, and E. Simon; and the court adjourned until Saturday, the 14th of October, 1843. And on Saturday, the 14th of October, 1843, the court met agreeably to adjournment, when there were present F. X. Martin, H. A. Bullard, A. Morphy, and E. Simon; and the court adjourned until Monday, the 16th of October, 1843. And on Monday, the 16th of October, 1843, the court met agreeably to adjournment, when there were present F. X. Martin, H. A. Bullard, A. Morphy, and E. Simon; and the court adjourned until Tuesday, the 17th of October, 1843. And on Tuesday, the 17th of October, the court met agreeably to adjournment, when there were present, F. X. Martin, H. A. Bullard, A. Morphy, and E. Simon; and the court adjourned until Wednesday, the 18th of October, 1843. And on Wednesday, the 18th of October, 1843, the court met agreeably to adjournment, when there were present F. X. Martin, H. A. Bullard, A. Morphy, E. Simon; and the court adjourned until Thursday, 19th of October, 1843. And on Thursday, the 19th of October, 1843, the court met agreeably to adjournment, when there were present H. A. Bullard, A. Morphy, E. Simon, and R. Garland; and the court adjourned until Friday, the 20th of October, 1843. And now, on Friday, the 20th of October, 1843, the court met agreeably to adjournment, when were present Judges Martin, Morphy, Simon, Garland.

And the case of Lowery, curator, vs. Erwin, being called, the same was argued, in presence of their honors, by D. S. Stacy, esq'r, counsel for the plaintiff and appellee, and by John K. Elgee, esq'r, as counsel for the defendant and appellant, when the court adjourned to Monday, the 23d of October, 1843. And on Monday, the 23d of October, 1843, the court met agreeably to adjournment, when there were present F. X. Martin, H. A. Bullard, A. Morphy, E. Simon, and R. Garland; and the court adjourned until Wednesday evening, the 25th of October, 1843. And on Wednesday evening, the 25th of October, the court met agreeably to adjournment, when there were present H. A. Bullard, A. Morphy, E. Simon, and R. Garland; and the court adjourned until Thursday, the 26th of October, 1843. And on Thursday, the 26th of October, 1843, the court met agreeably to adjournment, when there were present H. A. Bullard, A. Morphy, E. Simon, and R. Garland; and the court adjourned until Friday, the 27th of October, 1843. And on Friday, the 27th of October, 1843, the court met agreeably to adjournment, when there were present H. A. Bullard, A. Morphy, E. Simon, R. Garland.

And now, on Friday, the 27th of October, 1843, the court met agreeably to adjournment; present, Judges Bullard, Morphy, Simon, Garland.

When the court, through their organ, Mr. Justice Garland, rendered the following opinion and judgment in the case of A. J. Lowery, curator, vs. James Erwin; which opinion and judgment is in the words and figures following, to wit:

Opinion and judgment of the supreme court.

Supreme court, western district of Louisiana, at Alexandria, October term, 1843—Appeal from the parish of Madison, ninth district court.

ALFRED J. LOWERY, cur'r,
vs.
JAMES ERWIN.

The plaintiff, as curator of the vacant estate of Alexander McNeill, deceased, alleges that, at his (McNeill's) decease, he was the owner and possessor of a tract of land, with a stock of horses, mules, cattle, sheep, hogs, and aratory utensils attached thereto; that said land is cultivated as a cotton plantation, to which there is attached a large number of valuable slaves, named in the petition; all of which are of the value of one hundred thousand dollars, and produces an annual revenue of $25,000; he charges, that the defendant, in the month of July, 1840, since the death of Alexander McNeill, illegally, and by fraud, and collusion, and without legal title, took possession of the aforesaid property, and holds it, and has wrongfully converted it to his own use, with all the fruits and revenues, and pretends to be the owner of the same. The plaintiff, therefore, prays a judgment for the said land and slaves, that he, as the curator of the aforesaid succession, be decreed the owner of the same, and put in possession. The defendant, after a general denial, says, that on the 6th of July, 1840, he became the purchaser at a public sale, made by the marshal of the eastern district of Louisiana, who had seized the property under a writ of seizure and sale, issued on an order or judgment, given by the circuit court of the United States, for the 9th circuit, for the eastern district of Louisiana. That said writ, issued in the case of Andrew Erwin against Hector McNeill, testamentary executor of Alexander McNeill, as mentioned in the sale from the marshal, and the record of the suit annexed. He says, he gave the sum of $16,000 cash for the plantation and slaves, which was applied to the payment of a mortgage debt, owing by the aforesaid succession to Andrew Erwin; that, after the purchase of said property, he (defendant) received possession of the same from the marshal, in good faith, under the aforesaid title, except certain slaves, which are named, which, he says, were never delivered; he further says, that under the title aforesaid he proceeded to improve the land, by clearing a large part of it, and placing valuable and permanent improvements on it, which are worth $50,000, and have enhanced its value to that amount; he denies the crops produced amounted to the sum stated in the petition; they were made a great labor and expense; he says, the purchase is good and valid in law, was made in good faith, and all the proceedings remain in full force; that no appeal has been taken from them, nor have they been reversed or annulled; he sets them up as a plea, in bar to this suit; he further says, that if the sale is annulled and the plaintiff recover the property claimed, he must reimburse to him, Erwin, the purchase money with interest, and also the value of the improvements; and he cannot be dispossessed of the property until the en-

tire payment thereof; he further says, that he has sold all of the aforesaid property, and none of it is in his possession. The facts of the case are, that on the 8th day of January, 1835, Dawson and Nutt, by an authentic act of sale, before the judge of the parish of Carroll in this State, sold to Alexander McNeill the plantation and slaves in controversy, it being situated in that parish, but now parish of Madison; all the parties were at the time residents of the State of Mississippi, as appears in the act of sale, and none of them ever were residents of this State. The property was sold for $105,000, payable in five annual instalments, four of $25,000 each, and one of $5,000; all the payments have been made except the fourth, on which it is alleged $17,500 with interest, are due from January, 1839. The notes given by Alexander McNeill to secure the price of the property, were secured by a mortgage in the ordinary form; Alexander McNeill died in Mississippi, about the 28th of May, 1839. By his will, which contains several legacies of small value, he bequeathed the mass of his estate to Hector McNeill, also a resident and citizen of Mississippi, who he appointed his testamentary executor. On the 6th of June, 1839, this executor, stating himself to be a citizen of Coahoma county, in Mississippi, presented a petition to the judge of probates of the parish of Madison, in which after stating that his testator had died on the date above stated, in Mississippi, and left a will, in which he was appointed sole executor and principal legatee, an authenticated copy of which was annexed to the petition, he proceeds to say, that two large estates were in the possession of his testator, situated in this parish.

He says further, that by the laws of Mississippi, as executor of the will, he bound to present it for probate in Warren county in that State, without delay; but as the court would not sit for some weeks, he could not then have the will proved and recorded, nor could he then present a duly certified copy of it to be recorded in the said probate court of Madison. He says he is "desirous of taking on himself the succession of his deceased brother's estate, according to the terms of his last will and testament, and the laws of the State; he therefore prays that an inventory of all the property in the parish, belonging to the estate of said Alexander McNeill, deceased, be taken." And he prays the judge to grant him the succession of the deceased Alexander McNeill, according to the terms of the will, and the laws of the State; and that he will grant any other and whatever order may be necessary to entitle him (Hector,) to the possession and succession of the property left by the deceased; upon this petition no order or judgment was given by the probate judge; but on the 2d of July following, he proceeded to make an inventory of the property, composing Alexander McNeill's succession, which is signed by Hector McNeill, as executor. The will was probated in the Warren county, Mississippi, on the 24th of June, 1839, and a copy of it, and the proceedings in the aforesaid court, recorded in the probate court of Madison on the 1st of July, 1839, one day before the taking of the inventory, but no order taken on it, further than to record it. On the 1st of November, 1839, Hector McNeill made a declaration before the parish judge of the parish of Madi-

son, stating, that he is the owner of large possessions in said parish, consisting of land, slaves, &c., that he is desirous of acquiring residence, and to be entitled to the privileges of a resident of the State. He states his age, says he is from Mississippi, and desires to pursue planting, and to reside and to make that parish his permanent domicil and home; wherefore, he prays that his notice may be filed. The parol evidence shows that Hector McNeill has a family who have constantly resided in Mississippi, and he never resided personally in the parish or State, only making occasional visits to the plantation in Madison.

On the 23d of May, 1840, Andrew Erwin, a resident of Tennessee, presented his petition to the circuit court of the United States for the eastern district of Louisiana, stating that he was the holder of two of the notes given to Nutt & Dawson, due in January, 1839, on which $17,000, with ten per cent. interest thereon, are due, and costs of protest. He says those notes were given to secure a part of the price of the plantation and slaves, sold as aforesaid, and included in the mortgage stipulated in the same. He says that Hector McNeill, testamentary executor of Alexander McNeill, is indebted to him the amount due on said notes, who, it is alleged, resides in the parish of Madison; wherefore an order of seizure and sale is prayed for, commanding the marshal to sell the plantation and slaves mentioned, for the purpose of paying the aforesaid sum, interest, and costs. On the day this petition was filed, the district judge of the eastern district of Louisiana, not in open court, and signing himself V. K. Lawrence, U. S. judge, "said, inasmuch as the mortgage within mentioned imports a confession of judgment, let an order of seizure and sale issue for the sale of the property mortgaged, if the sum within claimed is not paid after legal notice; New Orleans, May 23d, 1840." On the same day, the order of seizure and sale was issued by the clerk, commanding the marshal to seize and sell the plantation and slaves, *was* are specially described, after legal demand, for cash, to satisfy the aforesaid demand; his writ went into the hands of the marshal on the 25th of May, and on the 29th of the same month he delivered the order of court and copy of mortgage to the defendant; also a notice directed to Hector McNeill, testamentary executor of Alexander McNeill, in which it is stated that the sum of $17,500, with interest, as claimed, is demanded of him, and that if, at the expiration of three days, the same is not paid, that the order of seizure and sale will be executed, and the plantation and slaves sold under it. The sum was not paid, and on the 1st of June a seizure was made of the plantation and fifty-seven slaves, which were, on the 4th of June, 1840, advertised for sale on the 6th of July following. Hector McNeill was notified of the seizure and day of sale; and the marshal says he affixed advertisements at the doors of the court-house and the parish judge's office, and other places in the parish, but they are not named, and no proof exists of any advertisements any places than those named. Appraisers were appointed, who appraised the land at $13 per acre, and the slaves at various prices, making altogether the sum of $23,845; and it was adjudicated to the defendant for $16,000 cash, and

the marshal made him a sale. It does not appear any money was paid by the purchaser; but William M. Beal, whom the marshal calls the agent of the plaintiff, Andrew Erwin, gave him (the marshal) a receipt for the sum, and he made a deed of sale, in which he omits to state the price bid by the defendant had been paid. Under this sale the defendant claims the property.

It is here proper to state, that the land which was, on the 6th of July, 1840, appraised at $13 per acre, was, on the 1st of July, 1839, when Hector McNeill, as executor, had an inventory made, appraised at $50 per acre; and it is also proved that about 400 acres out of 640 acres are cleared, and that it is worth from $35 to $40 per acre to clear it. Nothing seems to be allowed for stock and improvements by the appraisers. The slaves were appraised in July, 1840, for about half what they were in July, 1839. It is further to be noticed, that no explanation is given how these notes got into the hands of Andrew Erwin, in Tennessee; no transfer of the mortgage is made to him; without which no judge of the State courts would have granted an order of seizure and sale without a violation of law.

The parol evidence shews that, besides the slaves mentioned in the sale to the defendant, there were thirty-two or three more slaves on the plantation which possibly belonged to the defendant. The overseer on the plantation speaks of there being generally from 75 to 85 hands on the place. One of the appraisers at the marshal's sale had been McNeill's overseer on the place, from 1835 to July or August, 1839; he says he knew all, or nearly all, the slaves purchased from Dawson & Nutt, yet thirteen mentioned in the order of seizure are stated as not found. Another witness, who was an overseer for Hector McNeill, says, that in the year 1840, six hundred and twenty-five bales of cotton, of 400 pounds each, were made on the whole plantation. In 1841, there was 488 bales, of four hundred pounds each, made. In 1842, he thinks, there was more than 350 bales of the same weight. It is also in evidence, that the price of cotton, for crop of 1840, was about an average of ten and a half cents; for the crop of 1841, an average of eight cents; and for that of 1842, about six cents. The place purchased by the defendant adjoined other lands, which it seems also formed one plantation. The expense of the plantation in 1840 was not less than $5,000; in 1841, about $6,000; in 1842, about $4,000. Since the sale, about ninety acres of land have been cleared on the tract purchased by defendant; nine negro houses, four cisterns, two corn cribs, a stable, and corn mill, have been built—the whole worth $2,800; and it is worth from $35 to $40 per acre to clear the land, as the ninety acres have been cleared.

It is also proved, that from New Orleans to the parish of Madison is about 430 miles; and, further, it is shown, that neither Alexander McNeill or Hector McNeill ever had an actual residence in the parish of Madison. One witness says he had known both of them from the year 1833; that Alexander McNeill was a citizen of Mississippi to the day of his death, and that Hector McNeill was always a citizen of that State.

The overseers who were on the plantation say he never lived on them; that, in 1839 or 1840, he lived with his family, a part of the time, in Vicksburg, and the remainder near Warrenton, Mississippi, on a plantation he had there. The defendant offered in evidence all the proceedings relating to the order of seizure and sale, and the marshal's deed; and also offered the petition of Hector McNeill, addressed to the district court in and for the parish of Madison, praying an injunction against the New Orleans Exchange and Banking Company, for the purpose of shewing that, in that, he stated himself to be a citizen of Louisiana. He commences it, "The petition of Hector McNeill, testamentary executor of the last will and testament of his brother, Alexander McNeill, of said parish and State, &c., &c." In no part is it stated he is a citizen of Louisiana. This petition was filed on the 16th of July, 1840, ten days after the marshal's sale. In it he states that the succession of Alexander McNeill owes many large debts; that he, Hector, is administering the succession under the order of the court of probates of the parish of Madison, where the will of his testator is recorded, and he confirmed as executor; that the Exchange Bank of New Orleans sets up a large debt, pretended to be secured by mortgage, and had, on the 18th of May, 1843, obtained an order of seizure and sale against him, whether as executor or universal heir he does not say, and the sheriff had seized a number of slaves, and advertised them for sale; all of which he says is illegal. He says the district judge of the 9th district had no jurisdiction or authority to issue an order of seizure and sale in favor of said bank, the succession being in a course of administration; and further says, that the notes secured by the mortgage are not payable to the said bank, but to other persons, who have endorsed them, and there is no authentic transfer of the mortgage from the original payee to the said bank, without which no order of seizure and sale could issue. We thus see this executor, on the 6th of July, 1840, standing quietly by and permitting a large part of the property of the succession he was administering to be sold at a ruinous sacrifice under the order of seizure and sale under which the defendant claims, in which the very defects he sets forth in his petition exist. He does not complain then, no injunction is asked for; but a few days after, against another large creditor, he is vigilant in defence of the rights of the succession. We have stated the facts of the case fully, and from them we have strong grounds to believe there was collusion between the parties, and the sale under which the defendant claims. Upon the pleadings and evidence the district judge gave judgment in favor of the plaintiff for the land and slaves; he annulled the sale made by the marshal, and decreed the defendant to account for the crops of cotton made in the years 1840, 1841, and 1842, which, after deducting the expenses of the plantation and the value of the improvements made by the defendant, produced an amount nearly sufficient to repay him the price he said he had paid for the whole property. This sum the judge compensated against the price, so far as it extinguished it, and gave the defendant a judgment for the remainder, from which he has appealed. In this court the

counsel for the defendant calls our attentions to the exceptions set up in the answer in relation to the jurisdiction of the court that tried the cause. He says no State tribunal can question or enquire into the validity of any act or judgment of a United States court, and the same can only be enquired into on appeal to the Supreme Court of the United States, or by a direct action of nullity, before the tribunal which has rendered the decree. We admit, that neither this tribunal, or the inferior courts, can revise a judgment of the United States court upon the merits; we cannot say whether it was rendered upon proper evidence, or is correct in itself; but we do say, and have so decided recently, that when the proceedings of the federal courts are set up as the basis of title between persons litigating in our courts, that then we will look into their proceedings, for the purpose of seeing whether they have jurisdiction or authority to render such judgment or decree, whether there is a judgment, and also for the purpose of seeing whether the executory proceedings under it have been conformable to law. Garnand's Ex'rs, &c., vs Reed. The second exception is, that a State tribunal cannot annul or enquire into the acts of a United States marshal, when acting under the authority of a decree of the United States court, when such acts are only voidable, not void. Upon this point, and the one first stated, the counsel for the defendant has not furnished us with satisfactory authorities; we have recently considered it in the case cited, and come to a different conclusion. The marshals of the United States in Louisiana, in executing the process of their courts, are bound to conform to the State laws by an act of Congress and the rules of the circuit court; and when their proceedings form a link in the chain of title set up, we are bound to examine into the legality of them. A State court cannot direct a marshal how he shall act, or send process to him to be executed; but when he has acted, and his acts are instrumental in changing the title of property then between litigants before our courts, we will examine whether his acts have legally affected that object. It is well settled in our jurisprudence that, in forced alienations of property, there must be a reasonable diligence in, and compliance with, the forms of the law, under a penalty of nullity. When a party resorts to the summary and more severe remedies allowed by law, he is then held to a stricter compliance with every legal formality, and the executory process of seizure and sale may be considered as one of severity. It is obtained *ex parte*, and all the proceedings under it are to be scrutinized closely. It necessarily follows, that, if the law has not been complied with, the property is not transferred, and the purchaser acquires no title. 11 M. R., 607; 9 L. R., 542; 6 L. R., 623. It is equally well settled that, to support a sale made by a sheriff or marshal, under an execution or order of seizure and sale, there must be a valid judgment rendered by a court of competent jurisdiction, without which the title is not divested. 3 Robinson, 120. An officer who executes process issued by a court which has no jurisdiction is a trespasser, and liable in damages to the party injured. In the 13 L. R., 431, it is said, if there is a total want of jurisdiction, the proceed-

ings are null and void, and confer no title. 1 Peters, 340; 2 Peters, 157. It is, in fact, not denied, that we can enquire into the *competency* of the tribunal that rendered the judgment which caused a seizure and sale of the property. The first question is, had the circuit court of the United States jurisdiction over the persons or subject-matter in granting the order of seizure and sale? And, secondly, was there such a judgment as authorized the sale in question? The third question will be, have the formalities of the law been complied with by the marshal?

The 11th sec. of the Judiciary act of 1789, Ingersoll's Dig., 370, says "the circuit courts shall have original cognizance, concurrent with the several courts of the States, of all suits of a civil nature, at common law, or in equity, when the matter in dispute exceeds, exclusive of costs, the value of five hundred dollars, and the United States are plaintiffs, or petitioners, or an alien is a party, or the suit is between a citizen of the State where the suit is brought and a citizen of another State. Nor shall any district or circuit court have cognizance of any suit to recover the contents of any promissory or other chose in action in favor an assignee, unless a suit might have been prosecuted in such court to recover the said contract, if no assignment had been made, except in cases of foreign bills of exchange." Under this grant of jurisdiction, the Supreme Court of the United States has said the circuit court is one of limited jurisdiction, and has cognizance, not of cases generally, but only of a few specially circumstanced, amounting to a small portion of the cases which an unlimited jurisdiction would embrace; and the fair presumption is not, as with regard to a court of general jurisdiction, that a cause is within its jurisdiction unless the contrary appears, but rather that a cause is without its jurisdiction unless the contrary appears. 4 Dallas, 8; 1 Cond. Rep., 205. It will, therefore, be seen that the presumption of law is against the power to issue the order of seizure and sale. In order to take jurisdiction over the parties to the original suit, the defendant must have been a citizen of this State. The act of mortgage, under which Andrew Erwin proceeded to show that Alexander McNeill was a citizen of Mississippi, and the parol evidence, proves that he resided there to the day of his death. His will was probated there, and a copy of it was presented to the parish judge of Madison as a foreign testament, and recorded and acted on as such. The first we hear of Hector McNeill is his petition to the parish judge of Madison, in which he, in terms, states himself to be a citizen of Coahoma county, in the State of Mississippi. We see no intention manifested to become domiciliated in Louisiana, until the declaration made in November, 1839. That declaration did not give him a domicil in the State. In the case of Boon vs. Savage, 14 L. R., 169, we said the articles 42, 43, 44, of the La. code, only provide for a change of domicil by persons already residents of the State, and not those claiming from other States. As to them, it requires an actual residence of twelve months in the State before a domicil is required; and we, therefore, maintained an attachment against Savage as a non-resident. His case is precisely similar to that of Hector McNeill. He

had made the declaration of intention, and given notice before the parish judge; he had a plantation in the State, but the evidence showed he generally resided in Mississippi. This doctrine we have since confirmed, in a case in the eastern district, not yet reported. Vide B. and C. Dig., 286, 287. The parol evidence in the case completely negatives the idea that Hector McNeill was ever a citizen of, or had a domicil in, Louisiana. The stating him so in the petition presented to the circuit court in New Orleans was, therefore, a fraud; and his acquiescence in it proof of his participating in it. It was impossible for him to have acquired a domicil, if he had manifested his intention more strongly than he did. The circuit court was, therefore, without jurisdiction *ratione persona*. Then, had the circuit court *ratione materiæ*? We have shown the presumption of law is against it. The judiciary act quoted says, the jurisdiction is "concurrent with the courts of the several States of all suits of a civil nature, &c.;" which we understand to mean in cases where a citizen of the State can bring a suit, in the State court, against another citizen, or resident. An alien or citizen of another State may bring a similar suit in the circuit court of the United States, on a similar cause of action, and will be entitled to the same remedy on his judgment. We now put the question: Can any citizen of Louisiana obtain from a district or parish court, or from the court of probates itself, an order of seizure and sale against mortgaged property, composing part of a succession in the cause of administration in the court of probates, and represented by an executor, administrator, or curator? We are certain no such process could issue from a State tribunal. Where, then, is the authority to the circuit court to give any such order or judgment as it did? It is not in the act of Congress; nor can it be found in the State laws, from which the circuit court derives its only authority to grant decrees or orders of seizure, if it has any such power at all. The counsel for the defendant has strongly pressed on us a decision of the Supreme Court of the United States, in the 14 Peters, 67, in which that tribunal say, that a suit in the circuit court for Alabama, against an administrator, shall not abate in consequence of a plea that the estate they represent is insolvent, and is being administered under a statute of the State, which statute specially exempts foreign contracts from its operation. But the court goes on to argue and decide a question not before them, and say, if the exception in the statute did not exist, still the action would not abate. This is possibly true; but decisions on questions not before a court are, in general, not entitled to much weight; and we see no peculiar force in the reasoning on which this decision is based. It may have been, the demand of the plaintiff was not admitted by the administrators; and, when sued, they availed themselves of every plea to get clear of the action. The decision was on a plea of abatement; but the Supreme Court did not say, and we doubt if it ever will say, that a creditor, residing in another State, can sue, in the circuit court of the United States the executor or administrator of an estate, being administered in the court of probates as insolvent, obtain a judgment, and

issue execution on it, in violation of the State laws, and take the property out of the hands of the executor or administrator, and leave nothing for the domestic creditors. This court, in the 2 L. R., 351, said: "We have looked in vain for anything in the Constitution of the United States which gives this advantage to a citizen of another State (to seek a different remedy in the United States court) over our own citizens, and which makes right depend not on contract, or the law of contracts, but on the tribunal where the remedy is sought." 4 L. R., 83. We do not intend to deny that if an executor, administrator, or curator, refuses to admit the justice of a debt claimed by an alien or non-resident creditor, and will not class it as an acknowledged debt against the succession, to be paid as others, that he may be sued in the circuit court of the United States, and a judgment, liquidating the demand, be obtained; but that judgment must state it is to be paid out of the assets in the hands of the executor, &c., to be administered in due course of law; and no execution can issue in favor of the alien or non-resident creditor, unless one can issue in favor of the domestic creditor in a similar case. We are, therefore, of opinion the circuit court of the United States for the eastern district of Louisiana had no jurisdiction to issue the order of seizure and sale against Hector McNeill, testamentary executor of the succession of Alexander McNeill, deceased. But, says the counsel for the defendant, if the proceedings were not good against the testamentary executor, they were legal against Hector McNeill, as the universal legatee or heir of Alexander McNeill, deceased. The first answer to this argument is, the proceedings are not against him in that capacity; and, secondly, that the question of domicil is entirely opposed to the position. If the defendant was not a citizen, the process could not issue. The circuit court has no jurisdiction when neither of the parties are citizens of a State in which the action is instituted. Peters' C. C. R., 431. There is another objection. The defendant shows the estate of Alexander McNeill is largely indebted, and the executor was bound to administer it for the benefit of the creditors; and in the petition filed, on the 16th of July, 1840, against the Exchange Bank, he alleges he is so doing. It appears to us that it is not competent for the defendant to depart from the record, under which he avers he claims, and rely upon a right no where set forth in the answer.

The counsel further contends, that these nullities and objections cannot affect him, as he is a purchaser in good faith, and without knowledge of any of them; and that the only remedy is by an action to annul the proceedings in the circuit court of the United States, or by an appeal to the Supreme Court. In the first place, we doubt very much the ignorance and want of knowledge of the defendant; and, secondly, we consider the judgment or order a nullity, being given by a court having no authority to render it.

We come now to the proceedings of the marshal, and see how far he has complied with the legal formalities in the premises. There is no doubt the marshal and clerk of the court were bound to act in conform-

ity to the articles of the code of practice in relation to executory process. The 735 article says: "in obtaining this order of seizure, it shall suffice to give three days' notice to the debtor, counting from that on which the notice is given, if he resides on the spot, adding a day for every twenty miles between the place of his residence and the residence of the judge to whom the petition has been presented." The notice was given to Hector McNeill on the 29th of May, 1840, requiring him to pay in three days. On the first of June, the property was seized, advertised on the 4th, and sold on the 6th of July, 1840. It is proved, that, from New Orleans, the residence of the judge, to the parish of Madison, is 430 or 440 miles; at least twenty-five days' notice was therefore necessary. The Supreme Court of the United States, in 15 Peters. 167, say, until this notice is given, and the time elapsed, the order directing the seizure is not a final judgment upon which a writ of error will lie. If that be so, no executory proceedings can be had under it. The circuit court and the marshal are clearly bound by this construction of the law, and the sale was therefore premature, according to that decision. See also 7 N. S., 513; 15 L. R., 184.

The next question is in relation to the fruits, revenues, and improvements. The defendant says, he is a possessor in good faith, and ought only to account for the fruits and revenues from the inception of the suit, and he claims the value of the improvements made by him. The inferior judge thought he was not a possessor in good faith, and decreed he should account for the fruits and revenues in the years 1840, 1841, and 1842, viz: From the date of his possession, he made an allowance for his expenses of the plantation, also for the full value of the improvements placed on the land, and for clearing 90 acres; the balance of the value of the crops the judge compensated against the sum of $16,000, which it is pretended the defendant paid for the land, with interest thereon, which left a small balance in favor of the defendant, for which he had a judgment. It is very certain that a possessor in good faith, under a title which he honestly believes to be just in point of fact and in form, is not bound to account for the fruits and revenues until the property is claimed by the real owner. The possession and title upon which the fruits and revenues can be retained must be such as the party must have to entitle him to the prescription of ten years. The article 3414 of the code says, the possessor in good faith is he who has just reason to believe himself the master of the thing which he possesses, although he may not be in fact. The next article says, the possessor in bad faith is he who knows he has no title, or that his title is vicious and defective. It is hardly possible for any one to read the facts of this case, and have a doubt that the defendant was not aware of a defect in his title. The article 3450 of the code defines a *just title* to be one which the possessor may have received from any one whom he *honestly* believed to be the real owner, provided the titles were such as to transfer the property. The title must also be valid in point of form; for if the possession commenced by a contract void in that respect, it will protect the possessor as being in good faith.—Art. 3452. In the 7 N. S., 112,

this court said, a possessor without a just title owes the fruits from the beginning of his possession. That was a case in which the executors of a deceased person sold the property without an order of the court of probates, and it was shewn the defendant was ignorant of the fact; the court said he was bound to know whether there was an order or not. So in the 8 Martin, 629, a sale made by a tutrix of minors' property, without a compliance with the formalties of the law, was held not to be a just title, under which a party can possess in good faith. The authorities cited by the counsel for the defendant do not contravene any of these positions. They all go to show the possessor in good faith is entitled to his improvements and the fruits and revenues, which is undeniable; but they have not convinced us the defendant is such a possessor. It having been shewn that a forced sale without a judgment to authorize it is an absolute nullity, it only remains for us to say, that a judgment, given by a court having no jurisdiction or authority to render it, is also a nullity, and has no effect, and cannot form a basis of title. We are, therefore, of opinion, that the district judge did not err in considering the defendant as a possessor in bad faith, and, therefore, accountable for the fruits and revenues from the date of his possession. In stating the value of the crops, the expenses of the plantation, and the improvements, we do not think the judge erred; and his application of the balance found against the defendant to discharge the price paid by him for the property, with interest, is correct. After the judgment was rendered in the lower court, a member of the bar, who does not appear, from the record, to have been of counsel in the case, offered his affidavit, stating he was one of the counsel for the defendant in this suit, and that he had discovered, since the rendition of the judgment, new and material evidence in the case. He then says he expects to prove, by Thomas W. Amonett, the waiver of legal delay after seizure, by Hector McNeill, testamentary executor of Alexander McNeill, that he was not aware of the existence of this evidence on the trial, tho' he had used due diligence to obtain the necessary testimony. The witness by whom this new and unknown fact is expected to be proved was examined.

On the trial of the cause he was the overseer of the defendant for a considerable time, as he states in his testimony, and appears to have been one of the principal witnesses in the cause. Yet he never stated there was any waiver of the legal delay in giving the notice, nor was he interrogated on that point. It is not shown that the defendant and the other counsel in the case were also ignorant of this fact. The cause was tried at the November term, 1842, and the judge held it under advisement for some time; and the judgment was, by consent, entered on the records of the May term, 1843. This affidavit was made at that term of the court. In the 6 N. S., 327, and 7 N. S., 125, this court said, affidavits of this description, for the purpose of obtaining a new trial, ought to be received with caution, and under great restriction. 18 L. R., 351. In 3 L. R., 383, it was held a new trial will not be granted on the ground of newly discovered evidence, if it appear that the evidence consists of the testimony of a person who had been summoned as

a witness and dismissed without examination. If there was a waiver of the legal delay as to the notice, it is a little remarkable the marshal should not have mentioned it in his return; and it is scarcely credible that the defendant should have been ignorant of the fact, and the overseer, who was on the place at the time, have known it. It does not appear any diligence was used previous to the trial to procure such evidence. The omission of counsel to interrogate the witness as to a fact is no ground for a new trial. If the fact had actually been proved, we think it would have been another link in the chain of circumstances which goes to prove collusion between Hector McNeill and some of the parties concerned in this transaction. The judge did not err in overruling the motion for a new trial. In examining the final judgment we find the judge has fallen into an error, which it is necessary for us to correct. After the application of the proceeds of the fruits and revenues to the price and interest thereon, which the defendant had paid for the property, there remained a balance of $436 55 in favor of the defendant, for which sum the judge gave him judgment against the succession of Alexander McNeill, dec'd, as upon a demand in reconvention. In this he erred. The defendant, in his answer, did not pray for a judgment in reconvention, but asked that, in case of eviction, the price he paid should be refunded to him before a writ of possession should issue. This he had a right to demand; besides which the district court had no authority to give a judgment against the estate of McNeill, which is being administered in the court of probates. The plaintiff has asked us, in the event of our affirming the judgment, to remand the case, for the purpose of enabling him to recover the fruits and revenues since the year 1842, the defendant having taken a suspensive appeal, and thereby kept the plaintiff out of possession. We think it best to put an end to the present contest, and reserve to the plaintiff his right to claim the fruits and revenues since the 1st of January, 1843. The judgment of the district court, so far as it decrees the plaintiff the right to and possession of the plantation and slaves described in the petition, is affirmed; also as to the non-suit in relation to the slaves, Kitty Dixon and her children, and Little Henry, or Henry Lee. And as to the fruits and revenues, and their application to the price and interest said to be paid by the defendant, but as relates to the judgment of $436 55, with interest, as stated therein, against the succession of Alexander McNeill, dec'd, the same is annulled and reversed. And we do order and decree that no writ of possession issue in this case to put the plaintiff in possession of the plantation and slaves, until he pay the defendant, or deposit in the hands of the sheriff of the parish, to the credit of the defendant, $436 55, with interest thereon, at the rate of five per cent. per annum, from the 18th day of March, in the year 1843, until the day of payment or deposite, the appellee paying the costs of the appeal.

A true record, October term, 1843.

A. L. BRINGHURST, *Dy. Cl'k.*

To the honorable John McKinley, one of the justices of the Supreme Court of the United States, the petition of James Erwin, of the parish of , and State of Louisiana, with respects, represents:

That the supreme court of Louisiana, for the western district of said State, at Alexandria, at the October term of 1843, in the suit of Alfred J. Lowry, curator of Alexander McNeill, deceased, vs. James Erwin, rendered a final judgment against your petitioner, in which there is error, and by which is drawn in question the validity of an order and judgment of the honorable the circuit court of the United States for the eastern district of Louisiana, and a sale made by the marshal of that court in pursuance thereof. That the matter in dispute in said suit exceeds two thousand dollars, exclusive of costs, and that the said Alfred J. Lowry resides in the parish of Madison, in the State of Louisiana. Wherefore your petitioner prays for a writ of error and citation, in order that said judgment may be re-examined and reversed. And he offers to give good and sufficient security to prosecute said writ of error with effect.

WM. DUNBAR,
For JAMES ERWIN.

Writ of error allowed upon the plaintiff's giving bond, with A. J. Burnley, security, in the penalty of five hundred dollars, according to law.

J. McKINLEY,
Associate justice of the S. court U. S.

May 13, 1845.

(Endorsed.) Petition of James Erwin, for writ of error in the case of Alfred J. Lowry, curator of Alexander McNeill, dec'd, vs. James Erwin. Filed May 19th, 1845.

WM. F. MURRAY, *Dep'y Clerk*.

JAMES ERWIN, plt'ff in error,
vs.
ALFRED J. LOWRY, curator, def't in error. } No. 1,117.

In error from the supreme court of Louisiana, for the western district thereof:

The plt'ff in error assigns for error the following grounds why the judgment of the supreme court of the State of Louisiana should be reversed:

1st. The supreme court of the State of Louisiana erred in deciding that the United States district court was incompetent to render a judgment against an executor of an estate, at the suit of one of the creditors of said estate, and that therefore the decree rendered by Judge Lawrence, U. S. district judge, for the eastern district of Louisiana, ordering certain mortgaged property, belonging to the succession of Alexander McNeill, dec'd, to be sold, (see page of the Record,) was and is absolutely a nullity, and of force or effect, being in direct contradiction of

the laws of the U. S. establishing said courts, and enumerating theirs, and opposed to the decisions of the Supreme Court of the U. S. See 11th sect'n Judiciary act, 1789, and 14 Peters' Reports, by Suydam and others vs. Broadnax et al.

2d. The said court further erred in deciding that the acts of the U. S. marshal, when acting under and by virtue of an authority derived from an United States court, as in the present case, were null.

For the plaintiff in error alleges that said officer is alone amenable, as an officer, to the courts of the United States; that a contrary doctrine would tend to obstruct and defeat the action of the United States courts, should it be held that State tribunals have the power of deciding upon the legality or illegality of their official acts.

3d. The court erred, in deciding that though *possibly* a court of the U. S. might have authority to render a judgment against the executor of an estate, at the suit of a citizen of another State, yet that such tribunal could not, and did not, possess authority to order a sufficiency of the property of said estate (provided it were insolvent) to be sold to satisfy the said judgment; for the plaintiff in error alleges, that if such decision be law, it virtually robs the U. S. courts of the jurisdiction which the laws of the U. S. give them over a large class of cases; for the execution or writ to the marshal, being the only authoritative means the court possesses of enforcing its decrees, if the peculiar legislation of the State, with regard to the distribution of the assets of an estate, be paramount, then the writ in the marshal's hands is as waste paper, and of no effect.

4th. The court erred in deciding that, in present or any case, *that* the tribunals of a State had the right to examine into and decide upon the validity, or otherwise, of a decree of a court of the United States, the same being in direct violation of the laws and Constitution of the United States, which has organized tribunals of its own for deciding upon such questions, and before whom said questions alone can legally be brought.

The judgment of the supreme court of the State of Louisiana is therefore erroneous, contrary to law, and in violation of the Constitution of the United States; for all which before recited reasons, and manifest errors, plaintiff in error prays that the judgment rendered by said tribunal be annulled and reversed; and he prays that this court, proceeding to render such judgment as should have been rendered by the supreme court of the State of Louisiana, will adjudge and decide that the decree or judgment rendered by Judge Lawrence, on the 23d May, 1840, as district judge of the United States for the eastern district of Louisiana, (see page of this record,) was and is legal; that no State tribunal can question the validity of same; and that the acts of the marshal of the U. S., under same, are also legal and valid.

DUNBAR, HYAMS & ELGEE,
Counsel for plaintiff in error.

(Endorsed.)—James Erwin, pltff. in error, vs. Alfred J. Lowry, curator, defendant in error; assignment of errors.

JON. K. ELGEE.

Filed July 21st, 1845.

ALPH. LASTRAPES, *Clk.*

Western district of Alexandria:

Supreme court, State of Louisiana.

I, Alphonse Lastrapes, clerk of the supreme court of the State of Louisiana, in and for the western district of said State, holding sessions at Alexandria, in the State, do hereby certify, that the preceding one hundred and five pages, numbered from one to one hundred and five, is a true copy of the record filed in my office, being No. 1,117 of the docket of said court, wherein Alfred J. Lowery, curator, is plaintiff and appellee, and James Erwin, defendant and appellant, and contains a faithful transcript of all proceedings had in the said cause.

In testimony whereof, I have hereunto affixed my name, and the [SEAL.] seal of said court, at Alexandria, on this day, the 2d of September, A. D. 1845.

ALPH. LASTRAPES,

Clerk of the supreme court for the western dist. of Louisiana.

Filed 8th Dec., 1845.